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Supreme Court of the United States

OCTOBER TERM, 1954

No. 142

UNITED MINE WORKERS OF AMERICA and
UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Petitioners,

v.

RUDD PATTON, GILBERT BAILEY, NORMAN SUTHERLAND and W. C. LAMBERT, partners d/b/a LAUREL BRANCH COAL COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPPEALS FOR THE FOURTH CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPPEALS FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Mine Workers of America and United Mine Workers of America, District 28 (herein referred to as "UMW" and "District 28", respectively), and each of them, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on March 15, 1954, wherein said Court reversed the judgment of the United States District Court

for the Western District of Virginia, at Abingdon,[1] with directions to set aside the verdict and grant a new trial or for further proceedings not inconsistent with the Court's opinion filed in said case (R. 299), as well as the judgment and order of said Court of Appeals entered on April 12, 1954, denying to petitioners a rehearing in said case (R. 310).[2]

A transcript of the record in said case, including the proceedings and all matters in the United States Court of Appeals for the Fourth Circuit, is furnished herewith in accordance with the Rules of this Court.

OPINION BELOW

The opinion of the Court of Appeals is reported in 211 F. 2d 742 (Adv. Op. May 24, 1954) and appears at pages 283 et seq. of the printed record.

JURISDICTION

The judgment of the Court of Appeals reversing the trial court's judgment with directions, as aforesaid, was entered on March 15, 1954 (R. 299), while the Court of Appeals' judgment and order denying petitioners' petition to rehear was entered on April 12, 1954 (R. 310). The jurisdiction of this Court is invoked under 28 U.S.C., Sections 1254(1) and 2101(c).

QUESTIONS PRESENTED

1. In the absence of proof that UMW authorized, participated in or ratified the work stoppage at Clinchfield's mines in April 1950, is UMW liable or responsible for the acts of an agent of one of its districts, alleged to have been

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[1] Herein the United States Court of Appeals for the Fourth Circuit is referred to as the "Court of Appeals", "Fourth Circuit", or "Appellate Court", and the United States District Court for the Western District of Virginia, at Abingdon, as the "trial court".

[2] Herein the abbreviation "R." refers to the printed record and "T." to the certified transcript of the evidence filed in the Supreme Court of the United States. A stipulation has been filed regarding the printed record for the purposes of this petition for writ of certiorari (R. 312).

unlawful under and in violation of Section 303(a) of the Labor Management Relations Act, 1947, and subject to the imposition of damages under Section 303(b) thereof, merely because said district agent was effectuating UMW's policy of organizing unorganized employees?

2. Has Congress by enacting Section 303(b) of the Labor Management Relations Act, 1947, repealed the provisions of Section 6 of the Norris-LaGuardia Act as to suits prosecuted under Section 303 of the Act?

3. Is Section 303(a) violated where employees of an employer have engaged in a work stoppage allegedly at the inducement of an agent of a labor union who orders the employees to return to work but with a threat to the employer, which is unknown to the employees, that its employees would strike within a week unless the employees of another employer joined the union?

4. In view of congressional declaration that conduct violative of Section 303(a) of the Act is "unlawful", is proof of a violation thereof satisfied by a mere preponderance of the evidence?

5. In view of the exception of Section 303(a)(2) which permits a labor organization to engage in, or to induce or encourage employees of an employer to engage in a strike, where an object thereof is to force or require any other employer to recognize or bargain with it as its employees' representative if the labor organization has been certified as the representative of such employees under Section 9 of the Act, does the same result obtain where, in lieu of such certification, the employer and the labor organization have executed a collective bargaining agreement in which the former has agreed to recognize, and pursuant thereto did recognize, the labor organization as such collective bargaining agent?

6. Does the evidence offered to prove compensatory damages suffice as a basis for an award of damages under Section 303(b) of the Act?

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions involved are Section 6, Norris-LaGuardia Act (29 U.S.C. 106), and Sections 2(13), 8(d)(4), 301(a) and (e), and 303(a) and (b), all of the Labor Management Relations Act, 1947. These statutory provisions are set forth in Appendix A hereto.

STATEMENT

1. The Pleadings, Trial Proceedings and the Court of Appeals' Judgment.

Rudd Patton, Gilbert Bailey, Norman Sutherland and W. C. Lambert, partners d/b/a Laurel Branch Coal Company (herein referred to either as "plaintiffs" or "Laurel Branch"), complaining that petitioners had violated Section 303(a) of the Labor Management Relations Act, 1947 (herein referred to as "Act"), sought in this action to recover of petitioners actual damages of $150,000.00 and punitive damages of $150,000.00 pursuant to Section 303(b) of the Act.

In the complaint, Laurel Branch alleged that it mined coal as lessee of, and sold such coal to, Clinchfield Coal Corporation;[3] that petitioners, through their agents, as the sole bargaining agents for Clinchfield's employees, maliciously and wilfully induced and encouraged those employees to strike on April 3, 1950; that they returned to work on April 10, 1950 with the threat that, unless by April 16, 1950 Clinchfield ceased doing business with Laurel Branch and terminated its lease (discussed herein, *post*, page 9), a general strike of all Clinchfield employees would be called, the purpose of which was to force Clinchfield to cease doing business with Laurel Branch and to cease buying or handling its coal, unless Laurel Branch's employees became members of the Union and Laurel Branch recognized and bargained with petitioners; that on April 11, 1950 Clinchfield notified Laurel Branch

[3] Herein called "Clinchfield".

that it would no longer buy any coal or comply with the lease and that mining must cease forthwith; that Laurel Branch "had no contract with any labor organization"; that neither of petitioners "had been certified as bargaining agents according to law"; and that because of such unlawful acts, Laurel Branch lost profits and was damaged as aforesaid.

Answers filed by petitioners, in addition to denying that they had committed, had knowledge of, participated in, or ratified the commission of the alleged unlawful acts by any individual officer, member, servant or agent of either of petitioners, asserted (R. 6-9) that (1) Laurel Branch had a valid, noncancellable lease with Clinchfield which, for a valuable consideration, it surrendered; (2) Laurel Branch had entered into a valid collective bargaining contract recognizing District 28 as the sole bargaining agent of Laurel Branch's employees, which Laurel Branch had repudiated, in violation of the Act and as an unfair labor practice thereunder; and (3) if there was a work stoppage, its purpose was to require Laurel Branch's abidance with the collective bargaining agreement.

Upon trial by jury, a verdict of $150,000.00 actual damages, the entire amount sued for, and $75,000.00 punitive damages, which was half the amount sued for, was returned and the trial court entered judgment therefor, with costs, against both petitioners on July 29, 1953.[4] Upon appeal, the Fourth Circuit, by judgment entered March 15, 1954, reversed the trial court's judgment[5] and remanded the case for a new trial or further proceedings not inconsistent with the Fourth Circuit's opinion (R. 299). A petition for re-

[4] The judgment order of July 29, 1953 authorized petitioners thereafter to submit written motions to set aside the verdict and grant a new trial, or as they may be advised. Petitioners' assigned grounds appear in the original record, pages 53 et seq. (R. 23). Petitioners' motion to set aside the jury verdict and judgment entered thereon and for judgment in accord with motions for directed verdicts, or for a new trial, was denied, to which action petitioners excepted. (R. 23).

[5] Reversal of the trial court's judgment is grounded in its "allowing the jury to award punitive damages" (R. 293), in the admission of incompetent and prejudicial evidence (R. 295-297), and in the trial court's instruction to the jury concerning loss of profits they would have earned during the period of the three-year lease (R. 297).

hearing, timely filed, was denied by the Fourth Circuit on April 12, 1954 (R. 310).

The instant case presented to the Court of Appeals, and now poses to this Court, novel issues under Section 303 of the Act. While the Court of Appeals has remanded the case to the trial court, there remain issues fundamental to the further conduct of the case, upon such remand, namely, whether by enactment of said Section 303, Congress has changed the rule of a parent labor organization's liability for allegedly wrongful conduct attributable to its district and local union affiliates as enunciated by this Court in the *Coronado* cases;[6] whether, by such enactment, Congress repealed the provisions of Section 6 of the Norris-LaGuardia Act as to suits prosecuted under Section 303; whether the evidence warrants the jury finding that Section 303(a) was violated; whether proof of the commission of activity made "*unlawful*" under said Section 303(a) is satisfied *by a mere preponderance* of the evidence; whether the exception in Section 303(a)(2) of the Act is applicable to the facts of this case; and whether the evidence offered to prove compensatory damages is sufficient as a basis for an award of damages under Section 303(b) of the Act. Review by writ of certiorari at this posture of the case is appropriate. *United States* v. *General Motors Corporation*, 323 U.S. 373, 377; *Land* v. *Dollar*, 330 U.S. 731, 734; *Larson* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 685.

2. The Facts.

a. The Issue of Liability.

Clinchfield, owned by the Pittston Company, is engaged in coal mining over extensive areas in southwestern Virginia and elsewhere. It leased to others smaller operations known as "truck mines".[7] Prior to its acquisition

[6] *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U.S. 344; *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U.S. 295.

[7] Thus named because it is necessary to truck the coal from the mine to some point on the railroad for shipment.

by Pittson, Clinchfield operations were either not organized or had company unions. Pittson's experience with organized labor had been satisfactory and, upon acquiring control of Clinchfield in 1945, Clinchfield's labor policy changed; and, after elections at the mines involved, it executed a collective bargaining contract with UMW.[8]

Plaintiffs Acquire, Then Lose, a Mining Lease

Clinchfield leased a truck mine, known as Laurel Branch, to Willard Moore. On February 28, 1949, Laurel Branch purchased the equipment used by Moore in operating Laurel Branch for $25,000.00, of which it paid $10,000.00 down (R. 24-25); and on March 1, 1949, Clinchfield leased to plaintiffs (P. Ex. 1)[9] the Laurel Branch property—a "31.68 acre mineral tract" (R. 46, 99) in Dickenson County, Virginia. The lease contained a 30-day cancellation clause applicable to both parties. On September 20, 1949, Clinchfield gave Laurel Branch written notice that the lease was cancelled as of October 20, 1949. Clinchfield subsequently reaffirmed the cancellation, but permitted Laurel Branch to continue mining on "a day to day basis, with Clinchfield Coal Corporation having the right to cancel this authority to mine at any time upon notice to you". On November 23, 1949, notice was given Laurel Branch that authority to mine was cancelled as of midnight November 26, 1949. Laurel Branch ceased mining (R. 27-30).

Reasons Prompting Cancellation of Lease

A serious policy question presented itself to Clinchfield as to whether it should continue or cancel the truck mine leases. Several factors entered into the determination of this problem, among them the economic question of whether

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[8] The Clinchfield mines material to the present inquiry are in Dickenson and Russell Counties, Virginia, and are Meade Mine, Moss Mine, two mines at Clincheo known as Nos. 7 and 9, and three mines at Dante known as Nos. 2, 52 and 53. The company offices are at Dante.

[9] Reference is to "Plaintiffs' Exhibit".

the coal mined at the truck mines might come in competition with Clinchfield's own coal; whether it was satisfactory to operate Clinchfield's property with organized labor and to permit the operation of these truck mines with unorganized labor; and, finally, the question of whether some of the numerous strikes which had occurred at Clinchfield's own operations might have been caused or contributed to by reason of the unorganized truck mines. Clinchfield, after considering all of these questions, determined that it would exercise its option to cancel all of the truck mine leases and notices were sent out accordingly. Although the foregoing is the testimony of Clinchfield's Board Chairman Routh (R. 157-162), the Court of Appeals concluded (R. 285) that "It is a fair inference from the testimony that the cancellation of plaintiffs' lease was because of this trouble."

Plaintiffs Execute a Collective Bargaining Contract with District 28

Laurel Branch inquired of Rush Adams, now deceased (then Clinchfield's Production Manager), if there was any way that it could operate. Adams told them to see I. G. Stone, then Field Representative for District 28 (R. 70-71), who told Laurel Branch that it would be necessary to execute a collective bargaining agreement with the local union. Several conferences between Laurel Branch and Stone resulted in the execution of a collective bargaining agreement (R. 34) between Laurel Branch and "District 28, United Mine Workers of America", which was signed by I. G. Stone, Field Representative, and a Committee from the local union, and to which a copy of the National Bituminous Coal Wage Agreement was attached. That Wage Agreement had previously expired, by its own terms, on June 30, 1949 and Stone explained that the agreement between District 28 and plaintiffs "was to run for the term of whatever national contract was negotiated" (R. 93).

Work Resumed and Three-Year Non-Cancellable Lease Executed

Laurel Branch resumed operations as an organized union mine. Its employees "came to the local union meeting and were all initiated into" local union membership (R. 82).

Early in January, 1950, Adams sent for Patton and other of the Laurel Branch partners to come to Walter Lee Rush's office, when it was ascertained that Rush had prepared a three-year non-cancellable lease from Clinchfield. Clinchfield had not signed this document, which provided that a plat be attached to it showing the acreage to be mined. The partners executed the lease and delivered it to Rush for Clinchfield's execution and attachment of the map. Clinchfield signed the lease but never attached the survey or delivered the lease to Laurel Branch (R. 35-37).

Upon signing the lease, Laurel Branch asked Rush whether it would be necessary for them to continue operating as a union mine. Rush's reply was that this was a matter with which Clinchfield was not concerned, that Laurel Branch now had a three-year non-cancellable lease and could do as they pleased (R. 37).

Laurel Branch Repudiates the Collective Bargaining Contract with District 28

Laurel Branch immediately notified the employees of the new lease and that it would operate non-union. Patton knew the union members could not work non-union. Laurel Branch admitted that this change was for economic reasons alone because the union mines were operating only three days a week and, due to the great demand for coal occasioned by the three-day work week adopted by UMW's "Policy Committee",[10] it was more profitable for Laurel

[10] As UMW Secretary-Treasurer Owens testified, the International Convention, through a Scale Committee created by the Convention, set up what is known as the "Policy Committee", which is composed of more than 200 representatives from the several districts and who are selected in district conventions. This membership includes the president, secretary-treasurer, and two or more men employed in the mines in each district (R. 200). District 28 had representatives in the Committee which adopted the three-day work week, a policy which was binding on District 28 (R. 201).

Branch to operate non-union, thereby taking advantage of the coal shortage and high prices.

Operations Finally Terminated

Laurel Branch continued to operate the mine non-union until April 14, 1950. The reason for the termination of operations was one of the questions in the instant case. Laurel Branch contended that Clinchfield cancelled the lease because of strikes, or threatened strikes, of its operations. Petitioners asserted that Laurel Branch's repudiation of the collective bargaining contract and the non-union operation provoked the membership of the local unions to strike. Each of petitioners denied that they had any time authorized, ratified, called, sanctioned or participated in any strike against Clinchfield for the purpose of forcing Clinchfield to cancel the truck mine leases, and both denied that they were responsible for the acts of the local unions or their members. UMW denied responsibility for the acts of District 28 or any of its officials or employees.

Clinchfield's superintendent testified that "we were shut down everywhere" in April, 1950 (R. 119). According to Stone (R. 83), but denied by other witnesses, early in April, 1950 he held a meeting at a restaurant in Pound with the presidents of four Clinchfield local unions[11] and another field representative of District 28 and "one or two others", described by Stone as "key men" in the local (R. 83), "to organize our forces" again to get the truck mines unionized; and it was decided that if "we couldn't get them in any other way, we would just shut the Clinchfield mines down until they did come in or get out or something" (R. 84). Stone stated he then went to Clinchfield, complained to Adams that he had not kept his promise and had helped the truck mines "get away", and that "we was expecting him to help us get them in" (R. 84). Upon

[11] Dante, Clinchco, Lick Fork and Meade (R. 83).

Adams' profession that there was nothing "he could do now", Stone testified he told Adams "that was one of his tricks" and that "We ordered the mines[12] closed down and did" in order "to try to do something about the truck mines that got away from us" (R. 84-85). Asked whom he meant by "we", Stone replied, "The officers of the various local unions and myself" (R. 89, 95).

Stone's account of the Pound meeting, both as to time and purpose, was denied by the local union officials (T. 371; R. 226, 230, 235, 236)and by the positive evidence that there was no discussion of striking Clinchfield's mines to force it to cancel truck mine leases (R. 236-237; T. 397, 421-422, 426-428).

One witness related that the April work stoppage was because of seniority at the Moss mine and the Jimmy Artrip issue (R. 221)—"they just wanted our men to be working" (T. 385). The evidence shows that strikes occurred in 1949 and 1950 over safety, seniority and "different things". A work stoppage may occur when "a miner throws his water out" (R. 218); and, since there is no other drinking water in the mines for him to drink, the miners know he is going home (R. 218); no one would call the men, but "everybody would hit the road" (R. 224). As witness Mullins stated (R. 233), " . . . when the rest of them go home, I do, too." According to Robert Frazier, a mine committeeman at Clinchco, there were times when it could not be ascertained why the men had gone out on a wildcat or unauthorized strike (R. 228-229).

While Laurel Branch's witness Claude Martin, mine committee chairman at Clinchco's local union, stated that as a representative of his local union (R. 105) he talked with Stone, who gave him "orders to pull the mines",[13] which he did (R. 106), there is no evidence that the men at the mine where he worked ceased their work. Nor is there any evidence that any of the local unions voted to

[12] Stone stated the mines ordered closed were those at Dante, Clinchco, Meade and Lick Fork.

[13] Martin admits Stone made no specific mention of Laurel Branch (R. 107).

strike. To the contrary, the undisputed evidence is that the subject of striking to force Clinchfield to cancel the truck mine leases was not discussed at local union meetings (R. 222, 224, 228, 230, 232, 234, 237). Likewise, unchallenged is the testimony that Stone never gave instructions to Clinchco's president (R. 226) or to Dante's president "to pull the men out" (R. 221). No official of either UMW or District 28 ever directed the president of the Moss local to strike Clinchfield's mine to force it to cancel the leases (R. 237). The presidents and members of Dante (R. 221) and Clinchco (R. 225, 226) denied there was any strike over non-union mines. One of the presidents avowed that his instructions from District 28's president were to keep the mines at work "because we have a working contract, not a striking contract" (R. 221).

According to Stone, during the work stoppage "we" put the mines back to work for a week and told Clinchfield officials that at the end of that time "if they weren't either in the union or out of operation, it would be strike again"; and that "we had definite assurance that they would get rid of them as soon as they could" (R. 85).

Laurel Branch Surrenders Its Lease to Clinchfield and Abandons Operations Thereunder

During the work stoppage, Laurel Branch's mine worked (R. 39). According to Patton (R. 39), he and George and Charlie Lambert, pursuant to a call from Adams (now deceased), talked with Adams on April 11, 1950, when he told them that "they were closing down the Lick Fork dock and for us to quit mining" (R. 40) by April 13; that when he (Patton) inquired about taking coal to another dock, Adams replied "that that was beside the point; for us to quit" (R. 40). Patton admits that Clinchfield's president talked "about the coal business being in bad shape" and Clinchfield's closing one of its mines in West Virginia (R. 41). Likewise, Laurel Branch's witness Charlie Lambert quoted Adams' assigned reason

for the request that Laurel Branch quit to be because "the coal business was bad" (R. 132). Another of Laurel Branch's witnesses[14] admitted that Clinchfield had "a right serious question" whether truck mines were advantageous and admitted also that there was a question whether they "would come in competition with the company's business" (R. 116), while Clinchfield's Chairman of the Board (Joseph P. Routh), asserting that the truck mines caused the company to compete against itself (R. 157), testified that early in 1950 the policy was discussed and "our conclusion was that it wasn't to our best interests" (R. 157). Admitting that it was discussed that the union was giving trouble because of the non-union leases, Routh denied that "it was the main factor" in cancelling the leases in 1949 (R. 160) or the main reason for a strike at the Moss mine on January 30 through February 1, 1950 (R. 162); and though recalling a strike at Clinchfield's mines from April 4 to April 8, 1950, Routh did not recall that the reason therefor was forcing truck mines to organize (R. 162). While it "might have been one" factor, Routh emphatically asserted "it was not the main one" (R. 163). Walter Lee Rush quoted Adams as saying, in the April, 1950 meeting with Laurel Branch, that "the corporation was having trouble with the union over these leases, and they wanted to close them out" (R. 172). Adams appealed to Laurel Branch from the standpoint of personal friendship: the partners had been good friends of his (Adams) and of Clinchfield and he would like for them to go along with Clinchfield in closing the leases and possibly "at some other time the corporation could do something else for them and help them out" (R. 173). No agreement was reached at the meeting (R. 172). Rush described the partners as "very reluctant to give up these leases" (R. 172); but Adams subsequently reported to Rush that he had succeeded in negotiating with them. Admittedly on the day of the meeting, no strike was then

[14] H. W. Livingston, Clinchfield's Vice President.

in progress (R. 172). Clinchfield's President Hughes, who was present at the meeting, testified that both he and Adams regarded Laurel Branch's three-year lease as binding and he was "sure that Mr. Patton and the Lamberts did, too" (R. 167), and that termination thereof "had to be by agreement" (R. 167).

In its opinion (R. 286), the Court of Appeals, appraising the testimony, observed (R. 286) that "There is some conflict in the testimony as to whether mining operations were voluntarily abandoned by plaintiffs or whether abandonment was forced by the demand of Clinchfield brought about in turn by the strikes and threats of the union; but when the evidence is viewed, as it must be on motion for directed verdict, in the light most favorable to plaintiffs, there can be no question but that there is substantial evidence to support plaintiffs' contention."

Relation of UMW to District 28, and Relation of Each to Local Unions

One of the controlling questions in the case is that of agency. UMW's constitution (P. Ex. 10)[15] and the charter of District 28 were introduced in evidence. From that constitution, and the evidence of Stone, it appears that the International Union of United Mine Workers of America is made up of workers employed in and around coal mines. UMW is divided into Districts, and subdistricts, which in turn are composed of local unions *which alone have the right to admit to membership;* the locals elect their own officers, and, in autonomous districts, the districts elect all of the district officers, and in provisional districts they elect all district officers, except the president and the secretary-treasurer (R. 72; App. 10). All "are governed by the laws adopted by them in convention" (R. 203), and there is no more control over a provisional district than an autonomous one (R. 203).

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[15] The pertinent portions of the UMW Constitution appear herein as Appendix B.

District 28 is a provisional district. Its President and Secretary-Treasurer are appointed by the International President, subject to approval by the International Executive Board, which is the governing body of the International Union between conventions. The only difference between a provisional and an autonomous district is the appointment of the two officers mentioned, namely, the president and secretary-treasurer, instead of their election by the district convention. [See evidence of Stone (R. 72); evidence of Owens (R. 202-203).]

The supreme authority of the International Organization resides primarily in the International Convention, but during the recess of this Convention the International Executive Board is the governing body in all judicial and executive matters (App. 6).

Local Unions

The local unions elect their own officers, adopt their own by-laws, not in conflict with the constitution and rulings of the International Union, District or other superior body; they exercise full discipline over their own members (App. 8), and elect delegates to the International Convention and to the District Convention (P. Ex. 10, p. 39). Local union members elect the president, vice-president, secretary-treasurer, auditors and tellers of the International Organization (P. Ex. 10, p. 27-38). Each member who has been in good standing for three months prior to the election is entitled to vote for international officers. Voting places are arranged for each local union and the ballots are counted and forwarded to the International office there to be tabulated. In the selection of district officers the procedure is for the local unions to send delegates to a district convention which may either elect the field workers or confide that responsibility to the district president. In the instant case the district convention authorized the district president to select a field worker and he selected Stone (R. 189). The salaries and

expense accounts of these field workers are paid by the District (R. 88, 189).

Field Representatives

The duties of the field representatives are to try to organize unorganized mines, handle grievances and disputes arising in organized mines and perform such other duties as the district president may direct (R. 71). Stone testified that in 1949 there were "a number of truck mines in the Clinchfield area that were unorganized", and he was directed by the district president "to do what we could about it, to get them organized" (R. 74).

The International President by section 5 of Article IX of the constitution *may* appoint field workers "to conduct the affairs of the International Union" (App. 9). However, in the present case no such power was exercised by him; on the contrary, Stone's appointment was made by the District President *pursuant to the delegation of that power by the district convention.*

Article XVII of the constitution provides for International Organizers who work under the direction of the International President or the International Executive Board, and who are appointed by the International President and whose commissions are signed by him (App. 12). Stone, who is the District field worker for whose acts Laurel Branch seeks to hold UMW liable, did not hold such a commission and did not at any time claim to be an officer or representative of the International organization.

Stone said that the District President instructed him to organize the truck mines (R. 74), and on cross-examination (R. 95) he said that what he did was with the knowledge and consent of the District President.

Provisions as to Strikes

The constitutional provisions, which must govern the authority of any local union or subordinate officer to bind the International Union, are found on pages 22 and 68

of the Constitution (P. Ex. 10, App. 10, 11). The first reference gives the International Executive Board the power by a two-thirds vote to recommend the calling of a general strike and after a referendum vote of the members of the whole International Union in favor thereof to call it. Local strikes are governed by Article XVI, which forbids any District to engage in a strike involving all, or a major portion, of its members without sanction of the International Convention or Board.

Neither Districts nor local unions are authorized, without the sanction of the International Executive Board, to call any strike for which the International Organization is in any way responsible. These constitutional provisions are explained by John Owens (R. 201-202), who also testified, and it is not questioned, that there was no authorization, ratification, participation or sanction by the International Executive Board or the International Convention of any of the strikes at the Clinchfield operations.

As Secretary-Treasurer Owens stated, UMW has for sixty years endeavored to get all coal miners working in coal mines in America to join UMW (R. 207), and standard instructions to all districts "were to organize all of the unorganized men in the coal mines of America" (R. 209), and he assumed District 28 "had gotten the usual instructions to do everything they can, legally and lawfully, to organize the unorganized mines in District 28" but he recalled no specific instructions.

From 1946 through June 25, 1951,[16] District 28's president was William Minton (R. 187), whose duties included instructing and advising field workers, one of whom was I. G. Stone (who was originally appointed by Minton's predecessor under authority granted at a District 28 convention). Stone's salary and expenses were paid by District 28 (R. 87-88). According to Stone, in 1949 the dis-

[16] Minton was in District 28 in the early part of April, 1950; but from the latter part of April, 1950 until September, 1950 Minton was hospitalized, during which time Stone directed the field work (R. 188) under the title of district representative (R. 87).

trict president gave him directions concerning unorganized truck mines in the Clinchfield area (R. 74). The directions, as expressed by Stone, were "That these truck mines—we wanted to get them organized and we were instructed to do what we could about it, to get them organized" (R. 74).

Minton denies that he "directed or encouraged or called any strike against the Clinchfield Corporation for the purpose of affecting in any way the truck miners" and never authorized Stone to call or encourage any strike on Clinchfield property in connection with the truck miners (R. 188). Stone averred (R. 95), but Minton denied (R. 188), that Stone reported his activities to the district president, who did not object thereto (R. 95). Minton unequivocally related that Stone did not discuss the matter with him (R. 188).

The Court of Appeals' Conclusions on Liability

At the conclusion of Laurel Branch's evidence in chief (R. 10), petitioners moved for, but the trial court denied, a directed verdict for UMW. At the conclusion of all evidence (R. 15, 240), petitioners moved for, but the trial court denied, directed verdicts both for UMW and District 28. On motion to set aside the jury verdict, which the trial court refused, petitioners again "sought judgment in accordance with defendants' motion for a directed verdict" (R. 23). Petitioners excepted (R. 23).

Petitioners sought to have the jury charged that UMW's liability had to be grounded in proof that it "had authorized, participated in, or ratified" the strike of April, 1950 (R. 12) and that a prerequisite to recovery against UMW was proof that UMW's "International Convention or the International Executive Board sanctioned the strike of April, 1950, knowing it was for the purpose of forcing" Clinchfield to break its contract with Laurel Branch and cease doing business with it (R. 12).[17]

[17] See petitioners' Request for Charges, paragraphs 5, 6 and 8 (R. 11-13).

Rejecting such request, the Court charged the jury that (R. 248)

> "it appears from the evidence here that one of the primary functions of both defendants was to organize the unorganized mine workers",

and that (R. 249-250)

> "If you believe from the evidence that it was the duty of the officers of District 28 and Field Representative Stone to organize those mine workers in their territory who were unorganized, and that in the course of the efforts of the officers or field representatives to accomplish this end, they resorted to illegal means such as are here alleged, then I charge you that both District 28 and the United Mine Workers of America are responsible for their acts, whether such illegal acts had been previously authorized or subsequently ratified by the defendants or either of them."[18]

In the Fourth Circuit, petitioners urged that the trial court erred in refusing to sustain such motions for directed verdicts; that UMW neither authorized, participated in, nor ratified any strike at Clinchfield's mines; that under applicable law, UMW is not responsible or liable for any such work stoppage; and that the trial court committed reversible error in charging the jury on UMW's responsibility.

But the Court of Appeals declared "the evidence adduced was amply sufficient to take the case to the jury with respect to the liability of both" petitioners (R. 284). Although admitting that "there is no evidence of any resolution of either UMW or District 28 authorizing or ratifying the strikes" (R. 287), the Court of Appeals declared further that "There is evidence, however, that the strikes were called by the Field Representative of the United Mine Workers, who was employed by District 28, and that he was engaged in the organization work that was being

[18] Petitioners objected that the charge permitted a jury verdict against UMW upon jury belief that "officers of District 28 alone were responsible for the alleged unlawful acts" and that the charge makes UMW "responsible for any" District 28 or local union act committed in attempting to organize an unorganized field and "does not apply the proper test of authorization, ratification or sanction" (R. 256).

carried on by the international union through District 28, which was a mere division of the international union" (R. 287). The appellate court noted (R. 287) that

> "Members of the union are members of local and district unions as well as the international; and of the $4 monthly dues paid by them, $2 goes to the international union, $1 to the local union and $1 to the district organization."

The Court of Appeals then concluded (R. 287) that

> "It is clear that in carrying on organizational work the field representative is engaged in the business of both the international union and the district and that both are responsible for acts done by him within the scope and course of his employment."

In a petition to re-hear, which the Fourth Circuit denied (R. 300, 310), petitioners pointed out that the Court misconstrued petitioners' position as to the doctrine of the *Coronado* cases. (See discussion, *post*, p. 32).

The trial court, over petitioners' exceptions, rejected their contention that Section 6 of the Norris-LaGuardia Act was applicable in the instant action (T. 240-252). The trial court denied petitioners' Request for Charges 5, 6, 7 and 8, which would have required the jury to base liability as to each petitioner on a finding that each had authorized, participated in, or ratified the strike of April, 1950 (R. 11-13), and petitioners excepted (R. 258). In the trial court (T. 240 et seq.) and the Court of Appeals, petitioners challenged Laurel Branch's assertion that Section 6 of the Norris-LaGuardia Act had been repealed by Section 303(b) of Labor Management Relations Act, 1947. The Court of Appeals, however, noted that Section 301(b) of the latter Act [29 USC 185(b)] provides that a labor organization shall be bound by the acts of its agents; that subsection (e) [29 USC 185(e)] provides:

> "(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts per-

> formed were actually authorized or subsequently ratified shall not be controlling";

and that the section of the Act under which the instant action was brought contains the provision that suits under Section 303(b) shall be subject to the limitations and provisions of said Section 301 (29 USC 185). The appellate court then declared that (R. 290):

> "The history of the Act shows clearly that the intent of Congress was to apply to suits of this character the common law rules with respect to liability for acts of an agent . . .".

The trial court rejected petitioners' contention that the evidence failed to show that Section 303(a) of the Act had been violated.[18a] Petitioners urged in the Court of Appeals that since the undisputed evidence showed that there was no discussion of non-union truck mines at local union meetings and that no local union voted to strike, and Clinchfield employees returned to work and knew nothing of the threat which Stone testified he made to Clinchfield and there was no further inducement or encouragement that Clinchfield's employees cease work, the jury was not warranted in finding that petitioners induced or encouraged a strike at Clinchfield's mines in April, 1950 to force it to cease doing business with Laurel Branch or to require Laurel Branch to recognize UMW as representative of its employees; but the Court of Appeals, without explanation, found that "There was certainly evidence tending to show a violation by defendants of section 303(a) of the Act".

To the trial court's charge to the jury that Laurel Branch had the burden of proving the issues "by the preponderance of the evidence" and that the jury must be

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[18a] This issue was presented by (1) motions for a directed verdict and (2) motion to set aside the jury verdict, each of which the trial court overruled (R. 23, 240).

convinced "by the preponderance of the evidence" that the strike was caused or induced by responsible officers of one or both petitioners (R. 247-248, 254), petitioners excepted on the ground that the burden of proof should be more than a mere preponderance and that it "should be an undoubted preponderance of the evidence, or required to be proved clearly and distinctly" (R. 256). Such objection was again raised in the trial court on the motion to set aside the jury verdict. This question was presented to the Court of Appeals, which failed to make any ruling thereon.

One of the defenses asserted by petitioners was that Laurel Branch had recognized UMW as sole bargaining agent for its employees; had entered into a written contract so providing; and any work stoppage which occurred was for the purpose of requiring Laurel Branch to honor such contract and abide by its terms (R. 9). The trial court charged the jury (R. 251) that "Whether or not this contract was valid, or whether or not Plaintiffs breached this contract in January, 1950, is immaterial to any issue in this case; the critical time is April 1950, and it appears without conflict that in April, 1950, Plaintiffs were conducting their mining operations as an unorganized or non-union mine. If you should believe that the contract of December 1, 1949, was valid and that Plaintiffs breached it, the only bearing such action could possibly have upon this case would be its effect upon the credibility of the witnesses, should you consider that it has any such effect."

Petitioners' defense,[18b] as above asserted, was never presented to the jury and petitioners asserted before the Court of Appeals that by so limiting the legal significance of the agreement between Laurel Branch and District 28, the trial court committed prejudicial error. Petitioners argued that the Act seeks the avoidance of industrial

[18b] This issue was raised by exceptions to the charge (R. 257) and motion to set aside the jury verdict.

strife; that such strife in the instant case would have been wholly avoided had Laurel Branch honored the collective bargaining agreement of December 1, 1949 and had given the 60-day termination notice which Section 8(d)(4) of the Act [29 USC, Sec. 158(d)(4)] required, but which Laurel Branch did not give; and that while Section 303(a)(2) specifically avoids the impact of the act of inducing or encouraging employees where the National Labor Relations Board has certified a labor organization as the bargaining representative, the same result obtains in the instant case where the employer (Laurel Branch) became a signatory to a collective bargaining agreement by which Laurel Branch had solemnly agreed to recognize its contracting union as the bargaining agent for its employees. Such contentions were rejected by the Court of Appeals, which stated in its opinion (R. 292):

> "The argument is made that the strikes here are within the exception of 29 USC 187(a)(2) quoted above, because the purpose of the strikes was to force plaintiffs to recognize and deal with a union with which they had a bargaining contract; but the answer is that the exception applies only where 'such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act (29 USC 159)', and there had been no such certification. We know of no principle of law under which we would be justified in enlarging the exception contained in the statute and we are cited to no authority which would justify such action on our part."

b. The Issue of Compensatory Damages.

The trial court charged the jury (R. 254) that it could "consider the loss, if any, suffered by them in the liquidation of their mining operation" and if the jury believed that Laurel Branch had continued its mining operation for a "sufficient length of time to be considered as an established business", then it could include a sum which

would "reasonably compensate them for the loss of profits which they would have earned during the period of the lease which Clinchfield had promised them"; and that while the profits earned during the operational period "is not conclusive", the jury could consider "past earnings as a reasonable basis for calculation of what the future profits would have been". Petitioners objected thereto (R. 257)[18c] and in the Court of Appeals urged that Laurel Branch's evidence to prove compensatory damages did not meet the jural requirements that loss of profits must be established with reasonable certainty and that the proof offered showed the profits to be so remote, speculative, contingent and uncertain as to conclusively demonstrate that the jury award of $150,000.00 actual or compensatory damages was unwarranted.

Loss in Liquidation of Mining Operation

Laurel Branch paid $25,000.00 for its operation, of which amount it paid $10,000.00 down and the balance on a tonnage basis (R. 25). Laurel Branch's investment was approximately $28,000.00, (R. 42; see also P. Ex. 7 and 8). Upon surrender of its lease to Clinchfield, Laurel Branch sold it certain of its equipment for $4,850.00 (P. Ex. 13; R. 117). On their income tax returns for the year ending February 28, 1950, the partners took a depreciation credit of $8,348.26 on equipment, and on their concluding partnership return (period ending November 29, 1950) they took a like credit of $2,237.51 (see P. Ex. 7 and 8). W. C. Southern, whose office kept the partners' books and prepared their income tax returns, testified that the partners disposed of a large portion of their equipment and that when the partnership closed in either October or November, 1950, the assets were no longer in existence (R. 138-139).

[18c] Petitioners objected and excepted to the introduction of evidence (P. Ex. 14) concerning anticipated or prospective profits (R. 142, 271). This issue was also raised by motions for directed verdicts; by exceptions to the jury charge (R. 257); by Exceptions to refusal of petitioners' request 9 (R. 13, 258); and motion to set aside jury verdict.

Neither Southern nor any other witness accounted for the sale or disposition of any of the assets of the Laurel Branch operation, other than the equipment sold to Clinchfield, except on Plaintiffs' Exhibit 8 the sum of $6,426.34 is shown as "Sale price 6-12-50—11-29-50" and $11,361.39 as "Loss to business schedule above".

Past Earnings and Future Profits

The partners introduced their federal income tax partnership return (P. Ex. 7, R. 42-43) for the period February 28, 1949 to February 28, 1950, showing a taxable income of $46,981.83 and allocated as follows: to each of partners Bailey, Lambert and Sutherland, $11,461.08, and to Patton, $12,598.59 (R. 43). W. C. Southern testified that to that sum of $46,981.83, there should be added $11,922.57 deducted as depletion and $8,348.26 deducted as depreciation on equipment, so that the total cash profit for the 12-month period amounted to $69,539.36 (P. Ex. 15, R. 273), less $2,200.00 (R. 140-141), or $67,252.66 (R. 138-141). The average monthly profit, as calculated by Southern, was $5,794.92. The average tons mined per month was 4,622 or an average profit per ton of $1.25 based upon an average price of $4.57 (R. 143; also P. Ex. 14, R. 146).

Bernard Greear, owner and operator of a coal dock at Darwin, Virginia since May, 1949, testified that for coal of comparable value or quality of the Clinchfield seam, in 1950 he paid the following amounts per ton:

> May — $4.50; June - September — $4.25; October - February, 1951—$4.00; March-September, 1951—$4.15; October, 1951 to February, 1952—$4.25; March, 1952—$4.15; April, 1952—$4.15; May-September, 1952—$4.10; October, 1952—$4.25.

Greear testified also that from May, 1950 he purchased coal every day and could have purchased more, if obtainable, from March 15 to November 15 but during the winter

months "it is pretty well normal and static" (R. 137). Utilizing the average monthly production during the first 12 months of operation (namely, 4,622.63 tons), and at *"old operating cost"* but at current prices of coal (as set forth above), Southern, *assuming that the partners would have maintained the same average number of tons per month* (R. 143), estimated a net profit of $125,274.92 (R. 145, P. Ex. 14, R. 146) to partners for the 32 months remaining of the 36-month period of the Clinchfield lease.

Further speculating upon damages, Southern testified that "it is my understanding that the production *could have* been increased"; and that by "increasing their production by only fifty percent . . . there would have been an additional income of $62,637.46" (R. 145). Southern had no actual knowledge concerning these evidentiary matters; and it is noteworthy that while Patton testified that Laurel Branch was "in shape to increase their tonnage from 30 to 50%", when Southern testified about increased income due to the alleged increased production, his figures were based—not upon the 30-50% increase related by Patton, but upon the full 50% increase. Southern also stated that *it had been brought to his attention* that "after the mine became more fully developed and after they switch from . . . a pony mine or mules to a motor, . . . it did decrease the cost of operation" (R. 145). Southern had been advised by "parties" that *"they could have decreased* the cost of operation by 20¢ per ton"; *and based thereon,* Southern related that the partners *could have saved* an "anticipated profit" of $44,377.24. Southern estimated "a total loss by not being allowed to run of $232,289.62" (R. 145; P. Ex. 14).[19]

Plaintiffs' Exhibit No. 8 (R. 43), the partnership's income tax return for the period February 28, 1950 to November 29, 1950, shows a *loss* of $7,147.33, of which

[19] In referring to Plaintiffs' Exhibit No. 14, Southern remarked (R. 146): "This side here is more or less on theory. This side showing an increase of $69,000.00 is based on concrete facts as shown by their Federal income tax return."

$1,214.02 was allocated to Patton and $1,977.77 to each of the three other partners, the difference representing payment, according to Patton (R. 43), to "my managing the mine". But according to Southern, there was no loss: his explanation was that loss on sale of equipment, amounting to $11,361.39, was included in the tax return; that operation profit for the 6 weeks following February 28, 1950 was $4,214.06 and that for tax purposes there was a deduction for depreciation of $2,237.51, making a total taxable profit for the 6-weeks period of $6,451.57 (R. 146-147; P. Ex. 14).

Petitioners urged, in the Fourth Circuit, that there was (1) uncertainty of Laurel Branch's rights under the 3-year lease; (2) uncertainty as to the amount of coal available for Laurel Branch since there was no proof offered of this fact and Patton himself testified (R. 50) "I *think* this plat would have given us enough coal on it for the three-year period" Patton never received the plat (R. 37); (3) uncertainty that Laurel Branch could or would sell the coal mined; and (4) uncertainty that Laurel Branch would produce the same tonnage and at old production costs and the contingencies of increased production and decreased costs upon which Southern's calculations were premised. The Court of Appeals found (R. 292) "that the evidence sufficiently showed that plaintiffs had established a profitable business under the arrangement they had with Clinchfield, and that irrespective of the three-year lease a sufficient basis had been laid for an award of damages" and that "the case was one for the jury under 303(b)" of the Act (R. 286).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that "the evidence adduced was amply sufficient to take the case to the jury with respect to the liability of both defendants for the damages which plaintiffs allege."

2. In holding that "On these facts we think that the case was one for the jury under 303(b) of the Labor Management Relations Act, 61 Stat. 158, 159, 29 USC 187(b)".

3. In holding that "There was certainly evidence tending to show a violation by defendants of section 303(a) of the Act, 61 Stat. 158, 29 USC 187(a)".

4. In holding that "There is evidence, however, that the strikes were called by the Field Representative of the United Mine Workers, who was employed by District 28, and that he was engaged in the organization work that was being carried on by the international union through District 28, which was a mere division of the international union."

5. In holding that "It is clear that in carrying on organizational work the field representative is engaged in the business of both the international union and the district and that both are responsible for acts done by him within the scope and course of his employment."

6. In failing and refusing to follow and apply the pronouncements and doctrines of the *Coronado* cases, *supra,* in this case.

7. In misconstruing petitioners' contentions in the Court's statement (R. 289) that "Defendants argue that they are exempted from liability by the rule laid down in the *Coronado* cases as adopted in Section 6 of the Norris-LaGuardia Act which was interpreted by the Supreme Court in *United Brotherhood of Carpenters and Joiners* v. *United States,* 330 U. S. 395, 403 . . .".

8. In holding that "The relationship between the international union and the district organization was pointed out by the Supreme Court of Appeals of Virginia in *United Const. Workers et al.* v. *Laburnum Const. Corp.,* 194 Va. 872, 75 S.E. 2d 694, 703-704" and in attaching authoritative

pertinency to said case and other citations found on pages 287-288 of the printed record.

9. In holding that the rule of Section 6 of the Norris-LaGuardia Act "was not adopted by the Labor Management Relations Act and that its application to suits under that act was expressly excluded by section 301(e), 61 Stat. 156, 157, 29 USC 185(e)" and that section 303(b) of the Act "expressly provides that suits thereunder shall be subject to the limitations and provisions of section 301 (29 USC 185)".

10. In failing and refusing to hold that Section 6 of the Norris-LaGuardia Act is applicable to an action based upon an alleged violation of section 303(a).

11. In failing and refusing to hold that the quantum of proof required to prove a violation of section 303(a) is more than a preponderance of the evidence.

12. In holding that the exception of 29 USC 187(a)(2) does not apply to the circumstances of the instant case where the employer, Laurel Branch, had entered into a collective bargaining agreement with District 28 agreeing to recognize it as the sole collective bargaining representative of its employees and where said employer did recognize District 28 as such; and in failing and refusing to find and hold that the exception of 29 USC 187(a)(2) is applicable to the facts and circumstances of the instant action.

13. In holding and concluding that "the evidence sufficiently showed that plaintiffs had established a profitable business under the arrangement they had with Clinchfield, and that irrespective of the three year lease a sufficient basis had been laid for an award of damages."

14. In failing and refusing to find, hold and conclude that the trial court erred in overruling, and in failing to grant, petitioners' motions for directed verdicts as to them, and each of them, and in overruling, and in refusing to

sustain, petitioners' motion for judgment in accordance with said motions for directed verdicts.

15. In failing and refusing to enter, or direct entry of, judgment in favor of petitioners, and each of them, and of dismissal of the instant action as to them, and each of them; in entering judgment remanding the case for a new trial or further proceedings not inconsistent with the Fourth Circuit's opinion, as to the issues herein complained of; and in denying, and refusing to grant, petitioners' petition to rehear.

REASONS FOR GRANTING THE WRIT

1. In holding that the evidence justified the liability against UMW and in rejecting petitioners' contention that the trial court erred in overruling the motions to direct a verdict in favor of UMW, the Fourth Circuit has decided a federal question in a way probably in conflict with applicable decisions of this Court. The impact of this issue upon labor organizations signifies the importance that this Court determine this question.

The Fourth Circuit bottomed UMW's liability upon its conclusion that "in carrying on organizational work the field representative is engaged in the business of both the international union and the district and . . . both are responsible for acts done by him within the scope of his employment". In total disagreement and conflict therewith is this Court's holding of more than thirty years ago when, rejecting the doctrine of vicarious responsibility against UMW for wrongful conduct of one of its districts, this Court proclaimed in *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U.S. 344, 395:

> *"But it is said that the district was doing the work of the International and carrying out its policies, and this circumstance makes the former an agent. We cannot agree to this in the face of the specific stipulation between them that in such a case, unless the International expressly assumed responsibility, the district must meet it alone."* (Emphasis supplied.)

In that case, as in the instant one, this Court's concern was "whether the International Union was shown by any substantial evidence to have initiated, participated in, or ratified the interference with plaintiff's business" (259 U.S. 393). Further, Article XVI of UMW's Constitution (App. 10) prohibits a district to engage in a strike except by sanction of the International Convention or the International Executive Board. It provides specifically that strikes shall not be called in any unorganized field without sanction of that Board or an International Convention (App. 10). The juridical test of UMW's responsibility, declared this Court (p. 395), "is a mere question of actual agency, *which the constitutions of the two bodies settle conclusively*". That is the word of this Court when it applied the common law principles of agency in the first *Coronado* case. On UMW constitutional provisions identical with those in the instant case, this Court held that UMW could not engage in a strike called by officers of the district *without sanction of the International Board.* Stated this Court (259 U.S. 393):

> ". . . There is nothing to show that the International Board ever authorized it, took any part in preparation for it or in its maintenance. Nor did they or their organization ratify it by paying any of the expenses. *It came exactly within the definition of a local strike in the constitutions of both the National and the District organizations.*" (Emphasis supplied.)

Reaffirmance of that test or standard of union responsibility came in *Coronado Coal Co.* v. *United Mine Workers of America,* 268 U.S. 295, wherein (at page 304) the Supreme Court said:

> "In our previous opinion we held that a trades-union, organized as effectively as this United Mine Workers' organization was, might be held liable, and all its funds raised for the purpose of strikes might be levied upon to pay damages . . . *but certainly it must be clearly shown in order to impose such a liability on an association of 450,000 men that what*

was done was done by their agents in accordance with their fundamental agreement of association." (Emphasis supplied.)

The Fourth Circuit, in its opinion (R. 289), stated that petitioners argued that "they are exempted from liability by the rule laid down in the Coronado cases as adopted in section 6 of the Norris-LaGuardia Act which was interpreted by the Supreme Court in *United Brotherhood of Carpenters and Joiners* v. *United States*, 330 U.S. 395, 403" but in the petition to re-hear, petitioners submitted (R. 303-306) that the Fourth Circuit had misconstrued their contention; that petitioners' contention was that the rule in the *Coronado* cases, which is the common law rule, required proof that UMW had initiated, participated in or ratified the acts complained of and there was no such proof in the instant case; that Section 6 of the Norris-LaGuardia Act is an expansion of, and goes further than, the rule in the *Coronado* cases; and that the Labor Management Relations Act, 1947, has at most only restored the common law principles of agency to actions brought under Section 303 of the Act. (See excerpts from legislative debates, Appendix, p. 4).

Despite the Fourth Circuit's profession in its opinion (R. 290) that "the common law rules with respect to liability for acts of an agent" are determinative in suits of the character of the instant one under Section 303 of the Act, it rejected and refused to follow the juridical test and decisional law mandated in the *Coronado* cases and reached a conclusion wholly inconsonant with that pronounced in such cases. The Fourth Circuit ignored the language, pronouncements and juridical standard to be applied in determining the liability of a parent labor organization for alleged wrongful conduct of its district and local union affiliates. It ignored and gave no consideration to the textual provisions of UMW's Constitution declared by this Court to be a "specific stipulation" between UMW and its affiliates that "unless the International

expressly assumed responsibility" for a district strike, "the district must meet it alone", and the undisputed evidence that Stone was an employee of District 28 pursuant to authority granted its president at a District 28 convention and whose salary and expenses were paid by the district and that UMW did not authorize, participate in, endorse or ratify any strike, nor did UMW's International Convention or Executive Board do so. Instead, the Fourth Circuit cited cases and textual references,[20] which recite merely the common law rule of liability for an agent's acts, none of which involved, as did the *Coronado* cases, and the case at bar, the question of liability of a parent labor organization for alleged wrongful acts of its affiliates. It also quoted from *United Construction Workers et al* v. *Laburnum Const. Corp.*, 194 Va. 872, 75 S.E. 2d 694, 703-704, in which case the instant question was not at issue and the opinion contains no discussion, or citation of the *Coronado* cases. Moreover, the instant case, unlike *Laburnum*, involves a federal statute and the *Coronado* decisions were therefore controlling and rendered inapplicable any authority which the Fourth Circuit thought attached to the Laburnum decision.

There is nothing in the legislative history of the agency provisions found in Section 301(e) and Section 2(13) of the Act, dealing with the question of agency [see *post*, page 35], which gives any indication that Congress intended to overrule or supersede the doctrines and application thereof in the *Coronado* cases. Pertinently, the National Labor Relations Board, confronted with the issue of union responsibility, and interpreting Section 2(13), declared it "has a clear statutory mandate to apply the ordinary law of agency" and recognized "the authority of the *Coronado* cases." *Sunset Line and Twine Co.*, 79 NLRB 1487, 1507, 1514 (footnote 57). See also *Perry Norvell Co.*, 80 NLRB

[20] *Stockwell* v. *U. S.*, 13 Wall. 531, 545-548; *Hindman* v. *First Natl. Bank of Louisville*, 6 Circ., 112 F. 931; *Oman* v. *U. S.*, 10 Cir., 179 F. 2d 738; *U. S.* v. *Waters*, 7 Cir., 194 F. 2d 866; *Jefferson Standard Life Ins. Co.* v. *Hedrick*, 181 Va. 824, 27 S.E. 2d 198; 2 Am. Jur., 279; A.L.I. Restatement of Agency, sec. 212.

225; *Seafarer's International Union,* 100 NLRB 1176 (1952).

The Fourth Circuit failed to attach pertinency to the fact that a violation of Section 303(a) is legislatively declared to be unlawful. 2 Am. Jur., subject, Agency, p. 301 reads:

> "It is without doubt, however, the broad general rule that a principal or master is not responsible for the criminal acts or misdeeds of his agents or servants unless he in some way participates in, countenances or approves of what they do, or as it is sometimes put, unless he counsels, commands, aids or abets therein or procures the commission of the act. He must have knowledge of and give his assent to that which constitutes the violation of the law."

In the first *Coronado* case, as in the instant case, UMW was unsuccessful in its efforts for a directed verdict in the lower courts. This Court (259 U.S. 396) concluded that motion therefor "should have been granted". Petitioners urged in the Fourth Circuit, and now urge in this Court, that motions for a directed verdict for UMW should have been granted under the decisions in the *Coronado* cases. The Fourth Circuit's judgment remanding the case to the trial court, as aforesaid, was erroneous as to UMW.

The question of the liability and responsibility of a parent labor organization for alleged wrongful conduct of its affiliates is of importance in the Act's construction and administration, both in judicial proceedings and National Labor Relations Board proceedings. Since the Board, in applying Section 2(13) has followed the authority of the *Coronado* cases, it will be concerned whether it should follow the common law principles of agency as enunciated in the *Coronado* cases or the interpretation of the Fourth Circuit expressed in the instant case.

2. In both the trial and appellate courts, petitioners alleged, while Laurel Branch denied, that Section 6 of the Norris-LaGuardia Act was applicable to the instant action

and provided a legislative standard which required *actual,* rather than theoretical, culpability or complicity as a basis for petitioners' responsibility and liability. Section 6 provides that "no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon *clear proof* of *actual* participation in, or *actual* authorization of, such acts, or of ratification of such acts after *actual* knowledge thereof." (Emphasis supplied) While Section 303 of the Act does not specifically so state, the Fourth Circuit agreed with Laurel Branch's assertion that congressional repeal of Section 6 was effected by its enactment of said Section 303(b) as to suits prosecuted thereunder. The Fourth Circuit concluded (R. 289) that the rule of said Section 6 "was expressly excluded by section 301(e), which provides:

> "*For the purposes of this section,*[21] in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.",

since, as the Fourth Circuit reasoned, Section 303(b) "expressly provides that suits thereunder shall be subject to the limitations and provisions of section 301". The Fourth Circuit ignored the fact that Section 301(e) contains the words above italicized, namely, "for the purposes of this section"; and when such wording is considered with the fact that Congress likewise placed the definition of "agent" in Section 2(13) of the Act and did not place it in Section 303(b), the maxim "*Expressio unius est exclusio alterius*" is of particular significance. *United States* v. *Barnes,* 222 U.S. 513. The Fourth Circuit ignored that portion of the legislative history of the Act which shows that when the Senate Committee on Labor and Public Welfare submitted its report on Senate Bill 1126 to amend

the original National Labor Relations Act, four members of the Committee, including Senators Taft and Ball, filed their supplemental views in which they proposed four amendments, one of which provided, as Section 303(b) of the Act now does, for damage actions; and such proposal provided that "the provisions (except section 7, exclusive of clauses (c) and (e) and sections 11 and 12) of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932, shall not be applicable in respect of violations of subsection (a) . . ." —a provision which does not appear in Section 303(b). See Senate Report No. 105, on Senate Bill 1126, Supplemental Views, in Vol. 1, Legislative History of the Labor Management Relations Act, 1947 (U. S. Gov't. Printing Office), p. 456, 460-462.

Further demonstrating that said Section 6 is applicable is the fact that other sections of the Act specifically render the Norris-LaGuardia Act inapplicable, thus demonstrating that when Congress intended that such statutory provisions were not to be effective, Congress specifically so stated. See Section 10(h) [29 USCA 160(h)] and Section 208(b) [29 USCA 178(b)], of the Act. Since Section 303(b) does not expressly exclude the applicability of Section 6, the conclusion reached by the Fourth Circuit is tantamount to a repeal of that section insofar as Section 303(b) is concerned; but statutory repeal by implication is not favored. *U. S. Alkali Export Assn.* v. *United States,* 325 U.S. 196.

The Fourth Circuit noted that Section 303(b) "expressly provides that suits thereunder shall be subject to the limitations and provisions of section 301". While the former section does provide for suit in a federal district court "subject to the limitations and provisions of" Section 301, petitioners submit that such reference is merely for procedural purposes and to eliminate the necessity of

[21] Emphasis supplied.

repeating the provisions found in Section 301, such as "without regard to the citizenship of the parties" and provisions relating to service of process.

Petitioners assert therefore that Section 6 of the Norris-LaGuardia Act is applicable to an action based upon an alleged violation of Section 303(a).

This Court's mandate in the second *Coronado* case imposed liability only if it is "*clearly shown*" that "what was done was done by their agents in accordance with their fundamental agreement of association." Likewise said Section 6 required "clear proof". Hence, whether juridical tests afforded by the *Coronado* cases or the legislative criterion found in Norris-LaGuardia's Section 6 are made applicable, actual authorization, actual participation or ratification *clearly shown* is requisite for union responsibility and liability. Since both the trial court and the Fourth Circuit rejected petitioners' assertion that Section 6 is applicable in the instant case, both courts employed erroneous standards of liability as to both UMW and District 28. The jury's finding of liability as to both petitioners, and approval by both the trial and appellate court, were erroneous and unwarranted.

The issue of the applicability of said Section 6 to the instant action presents an important question of federal law which has not been, but should be, settled by this Court.

3. In holding that the evidence sufficed to show a violation by petitioners of Section 303(a) of the Act, the Fourth Circuit has reached a conclusion in conflict with the Court of Appeals for the Ninth Circuit which has juridically declared that mere threats to a neutral employer, where, as in the instant case, the evidence does not show that the employees knew of such threats and the employees returned to work, do not constitute violations of said section (*Studio Carpenters Local Union* v. *Loew's Inc.*, 9 Cir. 182 F. 2d 168, cert. den. 340 U.S. 828, rehear. den. 340 U.S.

885; *Schatte* v. *International Alliance, etc.*, 9 Cir., 182 F. 2d 158, 165), as well as that of a federal district court (*Haspel* v. *Bonnaz*, 112 F. Supp. 944, 946 (D.C., S.D. N.Y.).

The prohibitory language of Section 8(b)(4) of the Act is identical with that of Section 303(a), and the National Labor Relations Board, in construing Section 8(b)(4) likewise has reached a conclusion at variance with that of the Fourth Circuit. *Kimsey Mfg. Co.*, 89 NLRB 1168, 26 LRRM 1073; see also *Conway's Express*, 87 NLRB 972, 980.

The instant case thus presents the question of whether, under the evidence in this case, the Fourth Circuit was correct in concluding that the evidence showed a violation of Section 303(a). Petitioners assert that the Fourth Circuit erred in its conclusion. It has decided an important federal question which this Court has not, but should, settle in the public interest, and is one of importance in the construction and administration of the Act.

4. A further question presented is whether the trial court erred in charging the jury that Laurel Branch had the burden of proving the issues "by the preponderance of the evidence" and the jury must be convinced "by the preponderance of the evidence" that the strike was caused or induced by responsible officers of one or both petitioners (R. 247-248, 254), in view of the language of Section 303(a) which makes a violation of said section "*unlawful*, for the purposes of this section only". Petitioners contended, both in the trial and appellate courts, that because of the containment of the word "unlawful", proof of a violation had to be *clearly* shown. The Court of Appeals failed to answer this contention. Section 6 of the Norris-LaGuardia Act requires that liability for any "unlawful acts" must be based upon proof that is "clear". The second *Coronado* case (268 U.S. 295) requires that liability be "*clearly shown*". See also *Rudlin* v. *Parker*, 186 Va. 647, 43 S.E. 2d 918 (1947), where the Virginia court recognized that to

"sustain a defense based on fraud or other unlawful act more evidence is required to constitute a preponderance than in the ordinary civil case" (p. 921). This question of the quantum of the proof required to prove a violation of Section 303(a) is an important federal question, involving enforcement of a federal statute, which has not been, but should be, settled by this Court.

5. Herein (p. 21) petitioners have detailed the trial court's denial of having presented to the jury petitioner's defense that Laurel Branch had recognized UMW as sole bargaining agent for its employees; had entered into a written contract so providing and any work stoppage which occurred was for the purpose of requiring Laurel Branch to live up to such contract, abide by its terms, and bargain collectively with the recognized bargaining agent under such written contract. The trial court, over petitioner's objections, charged the jury that the collective bargaining agreement "is immaterial to any issue in this case" and that if the jury believed that the contract was valid and that Laurel Branch had breached it, such breach would affect only the credibility of the witnesses. As noted (p. 22) petitioner's contentions were rejected by the Court of Appeals. In so doing, petitioners assert that the Court of Appeals was in error.

Laurel Branch complained that by inducing or encouraging Clinchfield's employees to strike for the purpose of forcing or requiring it to recognize or bargain with UMW as the collective bargaining representative, petitioners offended Section 303(a)(2). The Act seeks the avoidance of industrial strife. In the instant case such strife would have been wholly avoided, as well as this litigation, had Laurel Branch honored its collective bargaining agreement of December 1, 1949. Laurel Branch's witness Stone admitted it was breached (R. 93). Another Laurel Branch witness admitted there would have been no work stoppage had Laurel Branch continued recognition of the bargain-

ing agreement and that Laurel Branch's breach of the agreement caused all the trouble (R. 104). It is noteworthy that Section 303(a)(2) excepts conduct otherwise violative of said section if "such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the National Labor Relations Act", and petitioners submit that the same result obtains where, as herein, the employer has become a signatory to the collective bargaining agreement and thereby solemnly agreed to recognize its contracting union as bargaining agent for its employees. *Jones and Laughlin Steel Corp.* v. *United Mine Workers of America,* D. C. Cir. 159 F. 2d 18, 20, cert. den. 331 U.S. 828, holds: ". . . we know of no law, statutory or otherwise, which prohibits an employer from recognizing any union as an exclusive representative *without any proceedings before the National Labor Relations Board.* The appellant . . . could have, *independent of any Labor Board Certification,* recognized the UCT as such." Thus it is evident the December 1, 1949 agreement required that Laurel Branch continue to recognize District 28 as the bargaining representative just as if there had been a National Labor Relations Board certification. Moreover Section 8(d)(4) of the Act [29 USCA, Section 158(d)(4)] required Laurel Branch to give a 60-day termination notice, which it did not give. Whatever industrial difficulty existed in the instant case resulted from Laurel Branch's breach of agreement and violation of said Section 8(d)(4). To accord Laurel Branch a favored position under such circumstances, as the trial court and the Fourth Circuit have, is to construe Section 303(a)(2) in such a manner as to invite employers to violate agreements, as well as the provisions of Section 8(d)(4), and to permit employer enrichment through repudiation of contract and law violation. Congress did not intend such a result.

This is an important federal question arising under Section 303(a)(2) of the Act which this Court has not, but should, settle.

6. The evidence offered to prove compensatory damages does not suffice as a basis for an award of damages under Section 303(b) of the Act. Determination of the question whether the evidence is sufficient as a basis for such an award presents an issue of federal importance in the administration and construction of said section and merits review. *Bigelow* v. *RKO Pictures*, 327 U.S. 251 (1946).

Petitioners have detailed herein (p. 23 et seq.) the factual situation as it relates to the jury award of compensatory damages. Although Laurel Branch had been in business only from March 1, 1949 to April 14, 1950, and had but one customer, namely, Clinchfield, the Fourth Circuit erroneously held "the evidence sufficiently showed that Plaintiffs had established a profitable business under the arrangement they had with Clinchfield, and that irrespective of the three year lease a sufficient basis had been laid for an award of damages" (R. 292), and that the facts brought the case under Section 303(b) of the Act (R. 286). The facts relied upon by the Court of Appeals (R. 286) consisted of Laurel Branch's profits "in excess of $60,000" and estimated "profits for the remaining months of the three year lease at $125,274.92, *based on the old operating costs and the current price of coal, and at $232,289.62, based upon reduced cost of operations considered possible.*" (Emphasis supplied).

The alleged loss of profits was based upon Laurel Branch's production for the months of March, 1949 through April, 1950, yet how much coal Laurel Branch would have mined during the 3-year period was not established since Laurel Branch failed to prove that the area covered by the lease would contain coal sufficient to permit a comparable production for the entire 3-year period. Laurel Branch's Patton testified, "I *think* this plat would have given us enough coal on it for the three-year period" (R. 50), although he admitted he never received any plat (R. 37). Hence, any award for loss of profits on unmined coal was purely speculative.

Another uncertainty was that Laurel Branch could or would sell coal it mined. *Clinchfield had the right, but not the obligation, to buy.* Evidence that Clinchfield purchased coal from truck mines, and the amount thereof, during the three-year period did not prove that Clinchfield would have bought Laurel Branch's output or an amount comparable to the production it claimed during the March, 1949-April, 1950, period. Clinchfield had numerous available sources for coal; and absent a binding commitment the amount Clinchfield *might* purchase lies within the realm of pure speculation. Nor does the evidence of a coal dock operator that from May, 1950, there was no period when he did not purchase coal, establish that he would have purchased Laurel Branch's output or any particular percentage thereof; what coal, if any, he would have bought from Laurel Branch is purely conjectural.

As noted above, the Court of Appeals accepted the witness' damage estimate "based on the old operating costs and current price of coal" (R. 286). Actually the witness based his damage estimate upon the average of production and old operating costs, which assumptions, petitioners submit, are unwarranted (1) because Laurel Branch's experience was not of sufficient duration and (2) the inherent hazards incidental to coal mining militate against the likelihood of uninterrupted operations free of accidents and problems peculiar to mining which slow up and decrease production and have a definitive effect on production costs.

Furthermore, the witness, whose figures the Court of Appeals accepted, premised his figures upon the assumption that "*production could have been* increased (R. 145) and he had been *advised* that "they *could have* decreased the cost of operation". This witness (Southern) was not testifying from actual knowledge, yet he placed before the jury with the trial court's consent—and the Court of Appeals has approved—his speculations in mathematical terms of "fifty percent" increase of production and decrease "cost of operation by 20¢ a ton". Clearly, these are

not tangible facts but mere guesswork. "Juries may not legally guess the money out of one litigant's pocket into that of another." *Bokoshe Smokeless Coal Co.* v. *Bray*, 155 P. 226 (Okla., 1916). In *Central Coal & Coke Co.* v. *Hartman*, 8 Cir., 111 Fed. 96, in which a plaintiff sought to recover loss of profits, the Eighth Circuit, dealing with the subject of expected profits, says (page 102):

> "Expected profits are, in their nature, contingent upon many changing circumstances, uncertain and remote at best. They can be recovered only when they are made reasonably certain by the proof of actual facts which present data for a rational estimate of their amount. The speculations and conjectures of witnesses who know no facts from which a reasonably accurate estimate can be made form no better basis for a judgment than the conjectures of the jury without facts."

Thus the jury's award included not only the $125,274.92 (which Southern fixed upon his admitted assumption of Laurel Branch's maintaining production on the basis of the first 12 months' operation) but also a further amount based upon further speculations and contingencies of increased production and decreased operation costs.

The rule both in Virginia where the matters involved herein arose and in the Fourth Circuit require that damages for loss of profits must be established with reasonable certainty and are not recoverable if remote, speculative, contingent or uncertain. *E. I. du Pont de Nemours & Co.* v. *Universal M. P. Corp.* 191 Va. 525, 62 S.E. 2d 233; *Ellerson* v. *Grove*, 4 Cir., 44 F. 2d 493. Cases[22] cited and relied upon by the Fourth Circuit in this case have the same jural requirements. In this case the jury award of compensatory damages is not based upon a legal injury. In addition to the uncertainties, speculations and contingencies already discussed, the jury award was based upon a

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22 *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555; *Bigelow* v. *R.K.O. Radio Pictures, Inc.*, 327 U.S. 251; *Polar Steamship Corp.* v. *Inland Overseas Steamship Corp.*, 4 Cir., 136 F. 2d 835.

jury charge that was confusing and uncertain and which told the jury both that it was immaterial whether the 3-year lease was binding and also that "Undoubtedly the Plaintiffs had been promised by Mr. Adams that he would give them" a three-year lease (R. 253). For the jury to utilize the 3-year period in the lease as a standard on which to base an award of loss of profits, it was necessary for it to believe there was an existent lease for that period, yet that issue was taken from it. If the lease was binding on Clinchfield, then its term was fixed; if not, it required some further action on Clinchfield's part, and hence the agreement was contingent. The lease's validity was therefore material. The trial court's charge permitted a jury award for loss of profits for a 3-year period without the necessity of its finding that Laurel Branch had a right to mine the coal for that period. The Court of Appeals in its opinion (R. 292) thought the evidence sufficiently showed that Laurel Branch had established a profitable business under its arrangement with Clinchfield "and that irrespective of the 3-year lease a sufficient basis had been laid for an award of damages." Petitioners submit that Laurel Branch could not be considered an established business, and further the Court of Appeals' conclusion of the immateriality of the lease's validity and binding effect was manifestly erroneous.

While the Court of Appeals directed the trial court to set aside the jury verdict, it did so, as to the $150,000.00 award of compensatory damages, because of the admission of incompetent and prejudicial evidence (R. 295-297) and error in the court's jury charge (R. 297-298). It erred in not sustaining, and in rejecting, petitioners' contentions that Laurel Branch could not be regarded as an established business and that the proof of loss of profits were not established with reasonable certainty but showed them to be remote, speculative, contingent and uncertain and that the evidence did not suffice to support an award of compensatory damages.

CONCLUSION

The Fourth Circuit's erroneous determination of the questions presented has resulted in that court's remanding the case to the trial court for a new trial or further proceedings not inconsistent with its opinion. Hence, for the reasons herein assigned and discussed, petitioners, and each of them, pray that this Petition for Writ of Certiorari should be granted, and that a writ of certiorari issue to review the decision and judgments of the United States Court of Appeals for the Fourth Circuit entered as aforesaid on March 15, 1954 (R. 299) and April 12, 1954 (R. 310-311).

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX A

Labor Management Relations Act, 1947:

29 USCA, Sec. 187: *"Boycotts and other unlawful combinations; right to sue; jurisdiction; limitations; damages*

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified

or approved by a representative of such employees whom such employer is required to recognize under subchapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit. June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title III, Sec. 303, 61 Stat. 158."

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29 U.S.C.A. 185, 61 Stat. 156: *Suits by and against labor organizations.*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

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29 USCA, Sec. 158 (d)(4) [Section 8(d) (4)]: "* * * PROVIDED, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification; * * *

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later: * * *"

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29 USCA, Sec. 106:

Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of,

such acts, or of ratification of such acts after actual knowledge thereof. Mar. 23, 1932, c. 90, Sec. 6, 47 Stat. 71.

Legislative History of the Labor Management Relations Act, 1947 (U. S. Government Printing Office, 1948):

Page 540:

"The conference agreement contains in the definition section a rule to be applied for the purpose of determining when a person is acting as an 'agent' of another person so as to make such other person responsible for his acts. A provision having the same effect was contained in section 12 of the House bill, under which the Norris-LaGuardia Act was made inapplicable in connection with certain activities dealt with in that section. One of the provisions of that act which was thus made inapplicable was section 6 thereof, which provides that no employer or labor organization participating or interested in a labor dispute shall be held responsible for the 'unlawful' acts of its agents except upon clear proof of actual authorization of the particular acts performed, or subsequent ratification thereof after knowledge. Hence under the conference agreement as under the House bill, both employers and labor organizations will be responsible for the acts of their agents in accordance with the ordinary common law rules of agency (and only ordinary evidence will be required to establish the agent's authority)."

* * * * *

Senator Taft, in response to a question by Senator Pepper, said at page 1026:

"I admit it may be difficult to prove the responsibility of a Union. It is sometimes difficult to prove in the case of an employer. If the wife of a man who is working at a plant receives a lot of telephone messages, very likely it cannot be proved that they came from the Union. There is no case then. There must be legal proof of agency in the case of Unions as in the case of corporations; but I do not think there is anything in the fact that a Union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged to the labor organization. No, I think not."

* * * * *

Page 1204:

"Mr. Ferguson. Is the word 'agent' as used sufficiently broad to cover a fellow employee? Or does it mean an agent of the Labor Union?

"Mr. Smith. I do not know how it would be interpreted, but my judgment is that it would be construed to mean an agent of the Labor Union who had been appointed to solicit membership.

"Mr. Ferguson. It would not apply to a fellow employee?

"Mr. Smith. I would not think so at all.

"Mr. Ferguson. I think the Legislative History should make it clear that it is not the intent of the proposers of the amendment that 'agent' should cover every employee.

"Mr. Smith. I think the suggestion is entirely correct. But perhaps the Senator from Ohio would comment on that.

* * * * *

"Mr. Taft. I think the word 'agent' used here, as used in the contract section, and as used in other places in the bill, means an agent under the ordinary rules of agency, an agent of the Labor Union, the organization as such. The fact that a man was a member of a Labor Union in my opinion would be no evidence whatever to show that he was an agent.

"Mr. Ferguson. I am glad to have that explanation in the record to make the history of it very clear, particularly as to the word 'agent' as used in the bill."

* * * * *

Page 1537:

"Senator Taft. Under the conference agreement, as under the House bill, both employers and labor organizations will be responsible for the acts of their agents in accordance with the common law rules of agency and the ordinary evidence required to establish such relationship."

On the floor of the Senate, Senator Taft was requested to include in the record certain statements made by the managers on the part of the House in returning the conference report, among them (as reported at page 1617) the following is found in the analysis of the bill, after referring to the definition of "agent" and the Norris-LaGuardia Act:

"Hence, under the conference agreement, as under the House bill, both employers and labor organizations will be responsible for the acts of their agents in accordance with the ordinary common law rules of agency. (And only ordinary evidence will be required to establish the agent's authority)."

• • • • •

Page 1654:

"Senator Taft. All we have tried to do is to swing that balance back, not too far, to a point where the parties can deal equally with each other. • • •

"This is a perfectly reasonable bill in every respect. If we are to have free collective bargaining it must be between two responsible parties. Some of the provisions of this bill deal with the question of making the Unions responsible. There is no reason in the world why a Union should not have the same responsibility that a corporation has which is engaged in business. So we have provided that a Union may be sued as if it were a corporation."

APPENDIX B

Plaintiffs' Exhibit No. 10

CONSTITUTION

of the

INTERNATIONAL UNION

UNITED MINE WORKERS OF AMERICA

Washington, D. C.

Effective November 1, 1948

Adopted at Cincinnati, Ohio

October 11, 1948

ARTICLE III.

Jurisdiction.

Section 1. The International Union shall be composed of workers eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions. The International Union

shall have supreme legislative, executive and judicial authority over all members and subordinate branches, and shall be the ultimate tribunal to which all matters of importance to the welfare of the membership and subordinate branches shall be referred for adjustment. Between International Conventions the supreme executive and judicial powers of the International Union shall be vested in its Executive officers and Executive Board in accordance with and subject to the provisions of this Constitution.

Sec. 2. All Districts, Sub-Districts and Local Unions must be chartered by, and shall be under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board. Charters of Districts, Sub-Districts and Local Unions may be revoked by the International President, who shall have authority to create a provisional government for the subordinate branch whose charter has been revoked. This action of the International President shall be subject to review by the International Executive Board upon appeal by any officers deposed or any members affected thereby. Until such review is had and unless said order of revocation is set aside, all members, officers and branches within the territory affected by the order of revocation shall respect and conform to said order. An appeal may be had from the decision of the Executive Board upon such order of revocation, to the next International Convention.

Sec. 3. In all questions of dispute, appeals and grievances (unless restricted by joint agreement) the right of appeal of an individual member shall end with the District Executive Board, and the right of appeal of any branch of the Organization shall end with the International Executive Board. This shall not prevent individuals whose membership is at stake from appealing to the International Executive Board, which body's decision shall be final and binding until reversed by the International Convention. When an appeal is taken, the defendants must be furnished a copy of the appeal in ample time to prepare their case. In all cases the decision of the subordinate tribunal must be complied with before the appellant's right of appeal shall be recognized. However, the appellant shall have the right of appeal, provided bond satisfactory to the court of appeal covering the amount of money involved is furnished.

Sec. 4. In all cases of appeals to or trial of charges by the International Executive Board, to insure a speedy hearing and promote the convenience of the parties and membership affected, the Executive Board, if in session, or the International President if the Executive Board be not in session, may at its or his discretion, designate a committee of the International Executive Board, who shall proceed to the locality or localities where a majority of the parties and witnesses are located and proceed to hear evidence upon such charges or appeal. Said committee shall make a report of the evidence heard, together with its preliminary findings of facts thereon, which shall be submitted to the International Executive Board for action thereon. The parties to such appeal or charges shall have reasonable notice of the times and places of the hearings by such committee, and shall have the right to appear before and be heard by the International Executive Board at the time of its disposition of the case.

ARTICLE IV.

Districts.

Section 1. Districts may be formed with such numbers and territory as may be designated by the International Officers and may adopt such laws for their government as do not conflict with the laws or rulings of the International Union or Joint Agreements.

Sec. 2. The International Executive Board shall have authority to change the boundaries of Districts as conditions may require; but the boundaries of self-supporting Districts shall not be changed except by a vote of the membership affected, as determined by the District, the referendum to be taken by the officers of the District affected and representatives of the International Union. All Local Unions must pay all taxes and assessments due the District to which they were attached before the change of boundary was made.

ARTICLE VI.

Local Unions.

Section 1. Local Unions may adopt such laws for their government as do not conflict with the laws or rulings

of the International, District or Sub-District Unions or Joint Agreements.

Sec. 2. Each Local Union shall have the right to penalize its own members, or (except as prohibited by Section 17 of Article XV) debar from membership any applicant for membership therein, but any member so penalized or any person so debarred shall have the right of appeal in consecutive order to the Sub-District, District and International Unions, any one of which branches shall have authority to reverse the decision of the Local Union; and any Local Union debarring any applicant from membership shall give such applicant written reason for his debarment.

Sec. 3. If in the judgment of the officers of the International District or Sub-District Unions, any Local Union has taken any action opposed to the interests of the United Mine Workers, the International Union or the District or Sub-District Unions having jurisdiction over the Local Union shall have the right to reverse the action of the Local Union.

Sec. 4. Should any Local Union be dissatisfied with the decision of any of the governing branches (unless prohibited by joint agreement) it shall have the right of appeal to the branch next in authority until a final decision is reached, as provided in Section 3 of Article III.

Sec. 5. Where it is decided that any branch of the Organization has done an injustice to any member, or applicant for membership, the branch responsible for the injustice must compensate such member or applicant for time lost and expense incurred while defending his rights, and any such defendant shall be restored to all former rights and privileges in the Organization.

ARTICLE VII.

Officers.

The officers of the International Union shall be one President, one Vice President, one Secretary-Treasurer, three Tellers, three Auditors, and one Executive Board Member from each of the Districts over which the United

Mine Workers has jurisdiction, the last named of which shall constitute the International Executive Board.

ARTICLE IX.

Duty of Officers.

Section 1. The President * * *

Sec. 5. He may appoint such organizers, field and office workers as may in his judgment be necessary to conduct the affairs of the International Union.

Sec. 27. The Board shall have power between Conventions, by a two-thirds vote, to recomend the calling of a general strike, but under no circumstances shall it call such a strike until approved by a referendum vote of the members.

ARTICLE XIV.

Local Unions, How Formed and Governed.

Section 1. Local Unions shall be composed of ten or more workers, skilled and unskilled, working in or around coal mines, coal washeries, coal processing plants, coke ovens, or in other industries designated and approved by the International Executive Board, but seven members shall be a quorum for a Local Union.

Sec. 2. When an applicant for membership makes his application and signs the check-off authorization, he shall be regarded as a member in good standing, but will be required to continue to pay his dues and assessments beginning with the month he starts to work and the remainder of the initiation fee and take the obligation, unless he has religious scruples against taking the obligation. In such case, the obligation shall be waived, provided the applicant gives notice of his objections to taking the obligation at the time his application for membership is filed.

* * * * *

Sec. 26. All Local Officers shall be elected the last meeting in June every alternate year by a majority vote of the members present, and shall serve for a period of two years, or until their successors are elected and qualified.

Sec. 27. The date of Local elections for Local Officers, Mine Committeemen, Safety Committeemen and Check-

weighmen must be generally advertised among the members. The Local Recording Secretary shall post notices at least one week previous to the date of election.

ARTICLE XVI.

Strikes.

Section 1. No District shall be permitted to engage in a strike involving all or a major portion of its members, without the sanction of an International Convention or the International Executive Board.

Sec. 2. Districts may order local strikes within their respective Districts on their own responsibility, but where local strikes are to be financed by the International Union, they must be sanctioned by the International Executive Board.

Sec. 3. Strikes shall not be called in any unorganized field without the sanction of an International Convention or the International Executive Board, and no financial aid shall be furnished by the International Union for the support of any strike until after the strike has been in effect four weeks, unless otherwise decided by the International Executive Board.

Sec. 4. The International Executive Board shall decide the conditions upon which strikes may be financed by the International Union; determine the amount of relief to be paid per member involved, etc.

Sec. 5. When strikes are sanctioned and financed by the International Union, the International President may appoint, subject to the approval of the International Executive Board, a financial agent who shall assume responsibility for all International funds so expended, said financial agent to be bonded; amount of bond to be determined by the International Executive Board, and no bills shall be paid by the International Union unless contracted or authorized by said financial agent, the resident International Officers or the International Executive Board.

Sec. 6. When strikes are financed by the International Union the International Secretary-Treasurer shall furnish each Local Union involved with report blanks on which all expenditures must be detailed as provided on the blanks,

and Recording Secretary shall fill out said blanks weekly; have the same attested by the Local President and Financial Secretary; attach the seal of the Local Union and forward one copy to the International Secretary-Treasurer; one copy to the financial agent in charge of the finances and retain one copy in the Local Union for future reference. Local Unions failing to comply with this section shall not receive financial relief from the International Union.

ARTICLE XVII.

Organizers.

Section 1. Organizers' Commissions must be signed by the International President and attested by the International Secretary-Treasurer.

Sec. 2. International Organizers shall work under the direction of the International President or the International Executive Board and shall have authority to visit any Local Union within the jurisdiction of the United Mine Workers, when directed by the proper authority to do so.

FILED
JUL 21 1954
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954

No. 142

UNITED MINE WORKERS OF AMERICA and UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Petitioners,

v.

RUDD PATTON, GILBERT BAILEY, NORMAN SUTHERLAND and W. C. LAMBERT, partners d/b/a LAUREL BRANCH COAL COMPANY

BRIEF OF RESPONDENT

Fred B. Greear,
Norton, Virginia

Robert T. Winston, Jr.,
Norton, Virginia

Counsel for Respondent

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Supreme Court of the United States

OCTOBER TERM, 1954

No. 142

Rudd Patton, Gilbert Bailey, Norman Sutherland and W. C. Lambert, Partners d/b/a Laurel Branch Coal Company, Plaintiffs.

V.)(**Brief of Respondents in Opposition To the Granting of Writ of Certiorari**

United Mine Workers of America and United Mine Workers of America, District 28, Defendants.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your respondents respectfully submit that a writ of certiorari should not issue to review the judgment of the United States Court of Appeals for the Fourth Circuit on the grounds assigned by the Petitioners.

STATEMENT OF THE CASE

Respondents would supplement and correct the statement of the case as set out by Petitioners in these regards:

The original complaint filed by the Laurel Branch Coal Company in the District Court, in addition to alleging that there was a strike on April 3, 1950, and a return to work on April 10, 1950, also alleged that the purposes of "said strike" were to force or require the Clinchfield Coal Corporation to cease doing business with the Plaintiff, and cancel Plaintiffs' lease, to force Clinchfield to cease buying, using, selling, handling, transporting, or dealing in the coal processed by the Plaintiff and to force or require Plaintiffs' employees to become dues paying members of the Defendant's Union against their will and desire and to force Plaintiff to recognize and bargain with Defendants' labor organization, which has not been certified according to law. (R. 5).

Respondents don't agree that there was any change in Clinchfield labor policy after the Pittston Company gained control of Clinchfield in 1945. According to I. G. Stone, who was organizing the mines at that time, the contract for the mine at Dante was signed January 1, 1945. (R. 73). Stone further stated that at the time of the second election at Clinchco they also had an election at Dante and there had to be another election at Clinchco. A contract was signed for Clinchco on August 13, 1945. The company would not agree to sign up at Clinchco after the Union lost the first election. (R. 73, 74).

REASONS PROMPTING CANCELLATION OF PLAINTIFFS' LEASE

The Plaintiffs' lease was first cancelled in the Fall of 1939 by Clinchfield. The Circuit Court of Appeals correctly stated in its opinion that "it is a fair inference from the testimony that the cancellation of Plaintiffs' lease was because of this trouble." The trouble referred to was labor trouble "because a number of truck mines upon its property, including that of Plaintiffs, was being operated non-union." (R. 284, 285). There was abundant evidence supporting this statement. I. G. Stone, the District Representative, testified that during his organizing campaign in the Pound section they had a strike for a day or so in the Clinchfield mines at Moss, Dante and Clinchco.

This strike was at his direction and was part of his organizing campaign and it got results in the form of a statement by Mr. Rush Adams, Production Manager for Clinchfield, "Let's get that thing settled and get those men back to work, and let's go about this thing and take a little more time and get them all at once." (R. 77, 78). He further testified that there were stoppages at Clinchfield before the general strike in 1949 over that issue, that "we" planned them ourselves and directed it and called wildcat strikes in behalf of that campaign. He further testified that Clinchfield Coal Company knew the actual reason for those strikes (R. 78). He went on to describe his system (R. 79) and stated that he got results from those methods. When the general cancellation of the truck mine leases came about in the Fall of 1949, copies of the notices of cancellation were actually mailed to Mr. Stone, the organizer, by Mr. Matthews, the President of Clinchfield (R. 79). Stone stated that he called these wildcat strikes prior to that time. (R. 80). Stone was corroborated in this testimony by Mr. E. F. Wright, who was General Superintendent of Clinchfield at the time in question, who recalled a series of strikes in 1949 and the early part of 1950, and he further stated that he found out the reason for some of those strikes and that most of the strikes at that period were over the truck mine issue (R. 118). He stated that Mr. Stone told him on several occasions that the strikes were over the truck mines (R. 119). Stone was further corroborated by the testimony of Claude Martin (R. 100, 101). The Defendant's witness, Everett Cantrell, also admitted on cross-examination that I. G. Stone told him to pass it on to the company officials if something wasn't done about the truck mines that they may not work and the best he could remember it was on a vacation period (R. 231, 232).

THE ALLEGED COLLECTIVE BARGAINING AGREEMENT

It was clear from the above cited evidence that Plaintiffs' first lease was cancelled as a result of the strikes called by the Union Representative against Clinchfield

Coal Company for the purpose of forcing Clinchfield to do something about the non-union truck mines. It was clearly an unfair labor practice in violation of the labor laws. After this cancellation forced by the unlawful acts of the Union organizers, Rush Adams, Clinchfield Production Manager, called George Lambert and stated he wanted to meet Lambert and Rudd Patton at Nora the following day. As Rudd Patton stated, Adams wanted to tell them what to do to get their mines back to work and he told them to go to Norton and see I. G. Stone and he would tell them what to do (R. 51). (It was not a case of Laurel Branch inquiring of Rush Adams if there was any way they could operate as Petitioner's Brief indicated, but it was a case of being expressly told by Rush Adams what to do to get their mine back to work). When Laurel Branch signed the alleged collective bargain agreement, it was the result of pure coercion resulting from the Union's unlawful acts. As Rudd Patton put it "When I signed that, I was forced to lose my business or sign that, and I signed it under pressure to get my mine back to work." (R. 51). He further stated, "I wouldn't have signed that if they hadn't put the pressure on me." (R. 52). He further stated both sides knew what it was and "The Clinchfield knew that they were forcing us to sign this with Stone before we could work." (R. 55). George Lambert very aptly described the nature of this forced agreement when he stated, "It is just like holding a fellow up. You are going to run as soon as you get a chance to run." It is clear that this alleged collective bargaining agreement was the result of unlawful coercion. There is no evidence at all that any of Laurel Branch's employees wished, desired or asked the Union to represent them in the signing of this alleged agreement. The Union merely moved in without any mandate from the employees in an effort to eliminate the non-union mines and get more dues paying members. They were not the designated representative of the employees nor is there any evidence that any of the employees wished the Union to assume that role. On the contrary, the evidence is that Laurel Branch was getting along with its employees before it was forced into that contract (R. 54). Under that alleged contract

the men had to join the Union and some of them as a result were fined. The men were not very happy about the fines (R. 37). One of the Defendant's witnesses, Roy Browning, an employee of Laurel Branch at the time, admitted that the reason he signed up was that Mr. Patton came around and told him to go and sign up and that was after he (Mr. Patton) had been forced by Clinchfield to sign with the Union. (R. 215).

REASONS PLAINTIFFS RESUMED OPERATION AS INDEPENDENT MINE

Clinchfield forced the Plaintiffs to sign up with Stone in late November and early December, 1949. In early January, 1950, Clinchfield's Land Agent called Plaintiffs to his office and told them that they were getting a non-cancellable three-year lease. Plaintiffs executed this lease. When Rudd Patton signed the lease he asked Rush how they could work and Rush stated, "We are giving you this three-year lease, and it is you-all's business how you work it", and further stated, "We are going to work our dock five days a week." (R. 56). Plaintiffs didn't consider they had a binding Union contract and they went on operating non-union for the reason as expressed by Rudd Patton, "We started operating non-union because this pressure that had been put on us back in November had now been taken off." (R. 57). In speaking of Clinchfield, Patton also stated, "So they had us bound and they turned us loose." (R. 56). Patton further expressed it this way, "I didn't want to go union to start with until this pressure was put on, and I had to leave my business or go union, and when the pressure was taken off, I wanted to go back to where I was before the pressure was put on." (R. 58).

George Lambert probably best expressed it when he stated, "It is just like holding a fellow up. You are going to run as soon as you get a chance to run."

TERMINATION OF OPERATIONS

Plaintiffs' evidence showed that they were forced to stop operating by Clinchfield after a strike was held in

the big Clinchfield mines during the week April 4-April 8, 1950. I. G. Stone testified that previous to this strike he had talked to Rush Adams, Clinchfield's Production Manager, in regard to these non-union truck mines that they had once organized and that he advised Adams that they were expecting him to help us get them in. Stone further testified that Adams advised him there wasn't anything he could do now; that they had been given a three-year lease and that Adams didn't know of anything he could do because of that. Thereupon Stone advised Adams, "And I told him that was one of his tricks and I told him I doubted if he would get away with it if he wanted to operate his mine." (R. 84). After that Stone ordered the mines closed down for the reason "To try to do something about the truck mines that got away from us." R. 85). This was the strike upon which Plaintiffs' claim was predicated.

There was a conflict in the evidence as to the reasons Plaintiffs ceased operating and this conflict was resolved by the jury in Plaintiffs' favor. Plaintiffs' evidence was that Rush Adams told them that they were closing down the Lick Fork dock and for us to quit mining. Plaintiffs asked them if they could take their coal to the Greear-Clintwood dock and they were told, "that that was beside the point; for us to quit." (R. 40). After that Rudd Patton discussed it with the other partners and they decided that there was nothing left for them to do but quit. That they didn't have any lease agreement with the Clinchfield Coal Corporation and they were afraid that Clinchfield would get them for trespassing. (R. 41) (See also R. 123, 124, 131, 132).

THE RELATION OF THE UNION TO THE DISTRICTS, LOCALS AND FIELD REPRESENTATIVES

The following portions of the Constitution are pertinent to the organic structure and to the relationship of the various divisions of the Union.

"ARTICLE III — Jurisdiction

Section 1. The International Union shall be com-

posed of workers eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions. The International Union shall have supreme legislative, executive and judicial authority over all members and subordinate branches, and shall be the ultimate tribunal to which all matters of importance to the welfare of the membership and subordinate branches shall be referred for adjustment. Between International Conventions the supreme executive and judicial powers of the International Union shall be vested in its Executive officers and Executive Board in accordance with and subject to the provisions of this constitution.

Sec. 2. All Districts, Sub-Districts and Local Unions must be chartered by, and shall be under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board. Charters of Districts, Sub-Districts and Local Unions may be revoked by the International President, who shall have authority to create a provisional government for the subordinate branch whose charter has been revoked. This action of the International President shall be subject to review by the International Executive Board upon appeal by any officers deposed or any members affected thereby. Until such review is had and unless said order of revocation is set aside, all members, officers and branches within the territory affected by the order of revocation shall respect and conform to said order. An appeal may be had from the decision of the Executive Board upon such order of revocation, to the next International Convention."

* * * * * *

"ARTICLE IV. — DISTRICTS

* * *

Sec. 2. The International Executive Board shall have authority to change the boundaries of Districts as conditions may require; but the boundaries of

self-supporting Districts shall not be changed except by a vote of the membership affected, as determined by the District, the referendum to be taken by the officers of the District affected and representatives of the International Union."

* * * * * * *

ARTICLE XIV. *

* * *

Sec. 21. If any mine or colliery is permanently abandoned, or should any Local Union for any cause disband, or should its charter be revoked, the charter and all moneys, supplies and property, including real estate belonging thereto, shall be taken over by the International Union; provided, that any remaining members of such Local Union in good standing shall be given transfer cards."

* * * * * * *

District 28 is a provisional district. It has no constitution. (R. 57). Under the provisions of the Constitution quoted, its boundaries can be changed by the International Executive Board so that for practical purposes the district could be eliminated. Its President and Secretary-Treasurer are appointed by the International Union. The Field Representatives may lose their jobs if they don't obey the instruction from the International Union. (R. 204). For practical purposes a provisional district such as District 28 is not an autonomous affiliate of a parent union, but is a component part of the parent union and subject to the control of the parent union.

The Constitution of the United Mine Workers of America further provides.

"ARTICLE XIV - *

* * *

Sec. 7. The initiation fee shall be divided as follows: $20.00 to be retained or forwarded to the Local Union; and $30.00 forwarded to the International Secretary-Treasurer."

* * * * * * *

(Same Article)

Sec. 11. The Local dues to be paid by each member shall not be less than four dollars per month ($48.00 per year), to be divided as follows: One dollar to be retained or sent to the Local Union; one dollar to be retained by the District organization; and two dollars to be forwarded to the International Secretary-Treasurer, together with such assessments as may be levied by the different branches of the Organization."

* * * * * *

District 28 was issued a charter for the purpose of making a thorough organization of the workers in its field (John Owens — Exhibit 1.). The standard instructions to all districts from the officers of the International Union were to organize all the unorganized men in the coal mines of America. (R. 209). The field representative, Stone, was directed by the District President to try to organize the truck mines. He called the strike in question during that organizational effort. He was seeking to obtain dues paying members, not only for the local and district, but for the International Union. When those dues paying members were obtained, the International Union got the lions share of the dues and fees. The District President approved this method of organizing. (R. 96).

SUMMARY OF ARGUMENT

District 28 is a provisional district. It has no constitution. It is a component part or a division of the United Mine Workers of America. It was chartered for the purpose of making a thorough organization of the mine workers in its territory. The Field Representative, apponited by the District, was directed by the district president to organize the truck mines in question. When he organized, he got members not for just the district but for the United Mine Workers of America. The Field Representative in such activity is engaged in the business of both the International Union and the District and both are therefore responsible for the acts done by him while organizing.

Section 6 of the Norris-LaGuardia Act is not applicable

to actions brought under Secton 303 of the Labor Management Relations Act. Section 301 provides "for the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." Section 303 (b) of the Act in providing for suits has this provision: "Subject to the limitations and provisions of section 301 hereof." This clearly makes suits brought under Section 303, subject to the provisions of Section 301. The Legislative History of the Act would also indicate this interrelation.

Plaintiffs' case is based upon an actual strike that occurred from April 4 through April 8, 1950. The question raised as to whether mere threats constitute a violation of 303 (a) of the Act is not in issue in this suit.

This is a civil action and a preponderance of the evidence is all that is required of the plaintiff. The Act declares that the alleged activities are unlawful but it does not make the activities a crime. There are no criminal sanctions and no criminal penalties. The usual presumption of innocence would therefore not apply.

The alleged collective bargaining agreement of December 1, 1949, is immaterial to any issue in this case. This alleged agreement was born of coercion and duress and was the result of the unlawful acts of the defendants and there was no evidence that the defendants were the representatives of the employees.

The plaintiffs proved that they had a very profitable business, good mining conditions, a promise of a lease, and that there was a market for the coal. Any uncertainty as to plaintiffs rights were caused by the defendants' unlawful acts. The evidence was sufficient to afford a reasonable basis for compensatory damages.

ARGUMENT

Respondents will follow the same order of argument as contained in the Petition.

1. The Fourth Circuit correctly held that "in carrying on organizational work the field representative is engaged in the business of both the international union and the district and . . . both are responsible for acts done by him within the scope of his employment." District 28 is a provisional district. It has no constitution. It was chartered for the purpose of organizing. It is not merely an affiliate of the International Union but under the constitution is a component part or a division. When the field representative organizes and gets membership for the Union, these new members join the United Mine Workers of America. When these new members join the Union, they are assessed an initiation fee and thereafter pay dues. The International Union gets the lion's share of these fruits of the organizer's campaign. When the new members are initiated, they take the obligation not to just a local or district but to the United Mine Workers of America (See Page 87 et seq. of the Constitution). In considering the responsibility of the United Mine Workers of America for the unlawful acts of a district representative of District 50, the Supreme Court of Appeals of Virginia in United Construction Workers et al v. Laburnum Construction Corporation 194 Va. 872, 75 S. E. 2d 694 correctly held "thus, while the defendants' brief insists that 'members of District 50, UCW and UMWA are not members of one organization,' a fair deduction from the record is that District 50 is a component part of United Mine Workers of America, or at least its agent in organizing workers in businesses other than that of mining coal."

The Labor Management Relations Act as codified in 29 USCA, Section 185 expressly states:

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall **be bound by the acts of its agents**. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable

only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets. (Bold Face Supplied)

* * * * * * * * * * *

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Respondents submit that I. G. Stone, the field representative of provisional district 28 was acting as "agent" for the International Union when he was organizing the truck mines and enlisting membership for the International Union. In the Coronado case the Court stated that the test "is a mere question of actual agency, which the constitutions of the two bodies settled conclusively." In this case the district does not have a constitution. In this case, the Field Representative was not merely carrying out the Union policy, but was trying to secure dues-paying members for the International Union. The International Union is clearly bound by the Field Representative's acts when the Field Representative calls a strike to further his effort to organize..

The Sixth Circuit Court of Appeals has already considered whether a regional director of District 50 of this Union was an "agent" of the International Union for service of process, in Claycroft Company v. United Mine Workers of America, 204 Fed. 2d 600. In holding that the regional director was such an agent, the Court noted, "The sole issue presented then, is whether Sandy was an agent of the International for service of process. That, in turn, depends upon whether District 50 and the International are separate autonomous entities, or whether District **50 is merely a part of the International and an agency through which it carries on its work.** (Bold Face Supplied). The actual relationship, therefore, between District 50 and the International must be determined."

* * * * * * * * * *

"On a consideration of the above provisions of the constitution of the International and the rules of the District, we are of the opinion that District 50 and the International are not separate, autonomous entities, but that District 50 is a part of the International and the agency through which it carries out certain of its work."

The Sixth Circuit also distinguished this case from Isbrandtsen Company, Inc., v. National Marine Engineers' **Beneficial Association, D. C. N. Y., 9 F. R. D. 541.** In noting the distinction, the Court pointed out:

"It is also pointed out that under the constitution of the National Union in the Isbrandtsen case, if the charter of a local union was revoked for any reason other than indebtedness to the National, the money, property, and other assets were to be retained by the local union for the benefit of its members. In the instant case, it is provided by the rules of District 50: "Should the Local Union for any cause attempt to dissolve, disband, or surrender its charter or should its charter be revoked, the charter and all moneys, supplies and property, including real estate shall be taken over by the International Union" The considerations that served to emphasize the autonomous nature of the National Union in the Isbrandtsen case, here serve to emphasize the fact that District 50 is not an autonomous entity separate from the International."

It is noted that the constitution of the United Mine Workers of America, provides that if a local is disbanded, all of the assets of the local are taken over by the International Union (See Art. 14, Section 21 — Constitution).

2. Petitioners allege that Section 6 of the Norris-LaGuardia act is applicable to the instant action. Your Respondents have contended that the provisions concerning agents as contained in Sections 301 (b) and 301 (e)* of the Labor Management Relations Act are applicable to actions contained in Section 303 (b) of the Act because of the plain wording contained in Section 303 (b): "Subject to the limitations and provisions of Section 301 hereof."

Legislative intent and legislative history would also

* See Appendix

indicate this interrelation.

The House Conference Report submitted by the Managers on the part of the House gave this explanation of the pertinent parts of the conference agreement:

> "Section 302 (b) of the House bill provided that any labor organization whose activities affected commerce should be bound by the acts of its agents and might sue or be sued as an entity in the courts of the United States. Any money judgment in such a suit was to be enforceable only against the organization as an entity and against its assets and not against any individual member or his assets. The conference agreement follows these provisions of the House bill except that this subsection is made applicable to labor organizations which represent employees in an industry affecting commerce and to employers whose activities affect commerce, as later defined. It is further provided that both the employer and the labor organization are to be bound by the acts of their agents. This subsection and the succeeding subsection of section 301 of the conference agreement (as was the case in the House bill and also in the Senate amendment) are **general in their application,** as distinguished from subsection (a). (Bold Face supplied).
>
> Section 302 (c) of the House bill contained provisions describing the venue of suits to which labor organizations were parties and section 302 (d) provided for the manner of service of process upon labor organizations. These provisions of the House bill appear unchanged as section 301 (c) and (d) of the conference agreement.
>
> Section 320 (e) of the House bill made the Norris-LaGuardia Act inapplicable in actions and proceedings involving violations of agreements between an employer and labor organization. Only part of this provision is included in the conference agreement. Section 6 of the Norris-LaGuardia Act provides that no employer or labor organization participating or

interested in a labor dispute shall be held responsible for the unlawful acts of their agents except upon clear proof of actual authorization of such acts, or ratification of such act after actual knowledge thereof. This provision in the Norris-LaGuardia Act was made inapplicable under the House bill, Section 301 (e) of the conference agreement provides that for the purposes of section 301 in determining whether any person is acting as an agent of another so as to make such other person responsible for his actions, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

Legislative History of the Labor Management Relations Act, 1947, Volume 1, Page 570.

It is noted that subsection (b) and the succeeding subsections of 301 of the conference agreement are general in their application as distinguished from subsection (a). This would indicate that subsection (a) applies only to suits brought on contract violations while it was the intent of Congress that the following subsections should apply to all suits brought for or against labor organizations without any limitations as to type. On Page 571, Volume 1 of the same text, the conference Report gives this further explanation:

"Section 303 of the Senate amendment contained a provision the effect of which was to give persons injured by boycotts and jurisdictional disputes described in the new section 8 (b) (4) of the National Labor Relations Act a right to sue the labor organization responsible therefor in any district court of the United States **(subject to the limitations and provisions of the section dealing with suits by and against labor organizations)** to recover damages sustained by him together with the costs of the suit. A comparable provision was contained in the House bill in the new section 12 of the National Labor Relations Act dealing with unlawful concerted activities. The conference agreement adopts the provisions of the

> Senate amendment with clarifying changes." (Bold Face supplied).

This again shows the Legislative intent to make the provisions of Section 301 applicable to suits brought under section 303.

If any question remains as to Legislative intent it should be removed by reading the supplementary analysis placed in the Congressional Record by Senator Taft on June 12, 1947. This is apparently the last analysis given by Senator Taft before the Bill was vetoed by President Truman and it was made to supplement a previous analysis and to correct mistaken statements made on the floor. In Legislative History of the Labor Management Relations Act, 1947, Volume 2, Page 1622:

> "Section 2 (2), 2 (13) and section 301 (e): The conference agreement in defining the term employer struck out the vague phrase in the Wagner Act "anyone acting in the interest of an employer" and inserted in lieu thereof the word "agent." The term agent is defined in section 2 (13) and section 301 (e), since it is used throughout the unfair labor practice sections of title I and in sections 301 and 303 of title III. In defining the term the conference amendment reads "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling." This restores the law of agency as it has been developed at common law.
>
> These amendments are criticized in one breath as imposing too harsh a liability upon unions for the acts of their officers or representatives and as too mild with respect to the liability of employers for the acts of their managerial and supervisory personnel. Of course, the definition applies equally in the responsibility imputed to both employers and labor organizations for the acts of their officers or representatives in the scope of their employment.
>
> It is true that this definition was written to avoid the construction which the Supreme Court in the

recent case of United States against United Brotherhood of Carpenters placed upon section 6 of the Norris-LaGuardia Act which exempts organizations from liability for illegal acts committeed in labor disputes unless proof of actual instigation, participation, or ratification can be shown. The construction the Supreme Court placed on this special exemption was so broad that Mr. Justice Frankfurter, speaking for the dissenting minority, pointed out that all unions need do in the future to escape liability for the illegal actions of their officers is simply to pass a standing resolution disclaiming such responsibility. The conferees agreed that the ordinary law of agency should apply to employer and union representatives. Consequently, when a supervisor acting in his capacity as such, engages in intimidating conduct or illegal action with respect to employees or labor organizers his conduct can be imputed to his employer regardless whether or not the company official approved or were even aware of his actions. Similarly union business agents or stewards, acting in their capacity of union officers, may make their union guilty of an unfair labor practice when they engage in conduct made an unfair-labor practice in the bill, even though no formal action has been taken by the union to authorize or approve such conduct."

It is noted that Senator Taft stated "the term agent is defined in section 2 (13) and section 301 (e), since it is used throughout the unfair labor practice sections of title I, and in sections 301 and 303 of title III." Taken by itself, Section 303 does not have the term "agent" in it. But, if the provisions as to agents in Section 301 are incorporated in Section 303 by reference as Respondents insist, the term "agent" is used in Section 303. It is obvious that Senator Taft considered and intended this interrelation of the two sections when he made that statement."

3. Petitioners argue that mere threats to an employer, do not violate section 303 (a) of the Act. That question is not in issue in this case because plaintiffs action is predicated not solely on mere threats but on an actual strike

lasting from April 4 to April 8, 1950. This strike was called by I. G. Stone, the Field Representative, after Stone had threatened Rush Adams (See R. 84). We believe that threats to strike would be sufficient but it is a moot point in this case.

4. The Trial Court correctly charged the jury that Laurel Branch had the burden of proving the issues "by the preponderance of the evidence." It is noted that this is a civil action and in this State a preponderance of the evidence is all that is required of the plaintiff. See Yeary v. Holbrook 198 S. E. 441,171 Va. 266. Appellants argue that since an unlawful act is charged there must be more than a preponderence. It is noted that Section 303 of the Labor Management Relations Act states "it shall be unlawful, for the purposes of this section only." The Act does not make the alleged activities a crime. There are no criminal sanctions and no criminal penalties. The section merely provides for a civil remedy. Therefore the usual presumption of innocence that is applied to crimes and acts visited by Criminal penalty would not apply as this Act distinctly limits redress for violations to a civil remedy. Therefore the general rule applicable to civil cases should apply.

5. The Trial Court correctly charged that the so called collective bargaining agreement is "immaterial to any issue in this case." This so called agreement was born of coercion and duress and was a result of the unlawful acts of the defendants in forcing Clinchfield to force plaintiffs to sign it. There was no evidence that the union at the time of the signing of the alleged agreement was the representative of the employees. The employees did not request the Union to get them such a contract. On the other hand, the evidence is that the employees were satisfied. It would be straining the purpose of the Act if such a sham agreement were made grounds to invoke the exception under Section 303 (a) (2) of the Act.

Petitioners also argue that Laurel Branch violated Section 8 (d) (4) of the Act in that they did not give a sixty (60) day termination notice. That portion of the section which defines collective bargaining reads as follows:

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the **representative of the employees** to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession." (Bold Face Ours). In this case there is no evidence that the Union was the representative of the employees on December 1, 1949. In fact the Union forced Laurel Branch to violate Section 8 (a) (1) of the Act in requiring Laurel Branch's employees to join the Union.

6. The evidence was sufficient to serve as a basis for compensatory damages. The plaintiff had been in business for over a year and had built up a profitable enterprise. It made a cash profit during the preceding year of over $67,000.00. The plaintiff proved that the coal was there, that the mining conditions were excellent, that Clinchfield which was purchasing its coal had an expanding market during the years that plaintiff would have operated, that Clinchfield purchased coal from others during all these years and plaintiffs further proved the price to the penny during the years which they were kept from operating. Rudd Patton, a man experienced in mining, testified that there was probably ten or fifteen years of coal in the boundary (R. 50). The defendants offered no evidence to the contrary. It is true that the plaintiffs never received their plat but this was undoubtedly due to the unlawful acts of the defendants in putting the pressure on Clinchfield. Any uncertainty that petitioners now allege, was due to their own unlawful acts. The defendants, although they had the full co-operation of the Clinchfield Coal Corporation in these cases, offered no evidence to prove their later allegations of uncertainties. The plaintiff, on the other hand, has produced best evidence available. In Am. Jur. 414:

"There is a clear distinction between the measure of proof necessary to establish the fact that the plaintiff has sustained some damage and the measure of proof necessary to enable the jury to fix the amount. Formerly, the tendency was to restrict the recovery to such matters as were susceptible of having attached to them an exact pecuniary value, but it is now generally held that the uncertainty which prevents a recovery is uncertainty as to the fact of the damage and not as to its amount and that where it is certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery. This view has been sustained where, from the nature of the case, the extent of the injury and the amount of damage are not capable of exact and accurate proof. Under such circumstances all that can be required is that the evidence with such certainty as the nature of the particular case may permit lay a foundation which will enable the trier of facts to make a fair and reasonable estimate, and the plaintiff will not be denied a substantial recovery if he has produced the best evidence available and it is sufficient to afford a reasonable basis for estimating his loss."

It is further immaterial whether the three-year lease was binding on Clinchfield. A secondary boycott is similar to the common law tort of interference. In 30 Am. Jur. page 74 in discussing the common law tort of interference: "It is immaterial, moreover, that a contract whose breach one induces is unenforceable against the other party." "

CONCLUSION

Your Respondents, therefore, insist that for reasons herein discussed, a writ of certiorari should not issue for the grounds assigned in the Petition.

RESPECTFULLY SUBMITTED,

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APPENDIX

LABOR MANAGEMENT RELATIONS ACT, 1947
TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act,

or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * * * * * * * * * *

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is —

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person.

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this sub-section shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.